HOMELAND SECURITY REORGANIZATION: WHAT IMPACT ON FEDERAL LAW ENFORCEMENT AND DRUG INTERDICTION

HEARING

BEFORE THE

SUBCOMMITTEE ON CRIMINAL JUSTICE, DRUG POLICY AND HUMAN RESOURCES

OF THE

COMMITTEE ON GOVERNMENT REFORM

HOUSE OF REPRESENTATIVES

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HOMELAND SECURITY REORGANIZATION: WHAT IMPACT ON FEDERAL LAW ENFORCEMENT AND DRUG INTERDICTION

MONDAY, JUNE 17, 2002

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON CRIMINAL JUSTICE, DRUG POLICY AND HUMAN RESOURCES,
COMMITTEE ON GOVERNMENT REFORM,
Washington, DC.

The subcommittee met, pursuant to notice, at 2:30 p.m., in room 2154, Rayburn House Office Building, Hon. Mark E. Souder (chairman of the subcommittee) presiding.

Present: Representatives Souder, Miller, Cummings, and Schakowsky.

Staff present: Christopher Donesa, staff director and chief counsel; Nicholas P. Coleman and Jim Rendon, professional staff members; Conn Carroll, clerk; Tony Haywood, minority counsel; and Earley Green, minority assistant clerk.

Mr. SOUDER. The subcommittee will now come to order.

Good afternoon. Today's hearing is the first we have held since President Bush announced his proposal to create a new cabinet Department of Homeland Security. In that respect, we will be breaking new ground as we begin to consider how best to implement such an ambitious and important reform proposal prior to considering it in the full Government Reform Committee in the coming weeks.

This is not, however, the first time we have considered the important issues of Federal law enforcement organization, drug interdiction, border security, or their interrelationship with increased demand of homeland security. We have held six field hearings on border enforcement along the northern and southern borders of the United States. I have personally visited several other ports of entry, and we have had two Washington hearings on the implications of homeland security requirements on other Federal law enforcement activities. This is in addition to our ongoing oversight of America's drug interdiction efforts.

Our work as a subcommittee has made very clear that the U.S. Customs Service, the Immigration and Naturalization Service and the U.S. Coast Guard, which are among the most prominent agencies in the proposed reorganization have critical missions unrelated to terrorism which cannot be allowed to wane and must be fully maintained. The House has to carefully consider the interrelation-

ship of these law enforcement missions with the demands of homeland security.

The administration has defined the mission of the proposed new department solely as one of preventing and responding to acts of terrorism. The concept of homeland security has to be defined more broadly to include the many other diverse threats to our Nation which are handled on a daily basis by these agencies as well as other law enforcement activities. It is clear that there is simply too much else at stake for our Nation to define issues solely as ones of terrorism.

Let me illustrate my point with a brief but very clear example of the risks which could be posed when resources are allocated single-mindedly. This map illustrates the deployment of Coast Guard assets prior to the September 11th attacks. They are balanced and allocated to a number of important missions such as drug interdiction, illegal migrant interdiction and fisheries enforcement. I believe it is apparent here that a vigorous forward American presence had been maintained in the Caribbean and the Eastern Pacific for counterdrug missions and law enforcement.

The second map shows how the resources were temporarily, and correctly I should emphasize, deployed after the attacks to respond to the terrorist attacks. It is evident here that the enhancement of immediate homeland security had to come at the price of customary missions of the Coast Guard. The chart also shows the redeployment of our assets from the front lines to a goal line defense centered on the East and West Coast of the United States itself. In the critical transit zone of the Eastern Pacific, for example, the deployment went from four cutters and two aircraft to a lone cutter.

This is not a criticism of the tremendous response by the Coast Guard or, by extension, of any other agency. Most would agree that the approach taken was wholly appropriate over the short term and redeployments have then subsequently moved the picture much closer to an equilibrium today. However, I believe that these charts are a clear illustration that an intensive focus on homeland security cannot be maintained over the long run without coming at the expense of other tasks. This lesson is equally applicable to every other mission of every other agency that will potentially be affected by the reorganization plan.

However this reform emerges, it is inevitable that there will be a profound impact on Federal law enforcement activities unrelated to terrorism on our Nation's drug interdiction and border patrol efforts and on operations at several Federal departments within the subcommittee's jurisdiction. Our challenge as we move through this process will be to determine how best to ensure the continuation and preservation of these missions within the new department. We also must optimize the organization of other agencies, such as the DEA, the FBI and law enforcement in the Treasury Department, which share tasks with agencies destined for the new department. And finally we must consider the many incidental benefits and synergies which will arise from the President's proposal. These include increased operational coordination of narcotics and migrant interdiction efforts among agencies that will now be united as well

as a significantly improved focus on the links between drug trade and international terrorism.

This afternoon we have an outstanding panel that will be able to discuss these important and complex issues with the benefit of great personal experience and the freedom to speak forthrightly as private citizens. I thank all of you for coming today on short notice to share your insights as we prepare to take up this legislation in the full committee.

We are joined by retired Admiral Robert Kramek, former Commander of the Coast Guard, Commandant of the Coast Guard; Mr. Donnie Marshall, former Administrator of DEA; Mr. Peter Nunez, former Assistant Secretary of Treasury for Enforcement; Mr. Douglas Kruhm, the former Head of the U.S. Border Patrol; and Mr. Sam Banks, former Acting Commissioner of the U.S. Customs Service. It is also a pleasure to be joined by Mr. Stephen Flynn of the Council on Foreign Relations, whose writings have provided the subcommittee with many important insights on border security. We look forward to your testimony. We've heard much in the media over the last few days, and it will be interesting to get your combined perspective on how to consolidate some of these issues.

Congressman Miller, do you have any opening comments you'd like to make?

Mr. MILLER. No.

Mr. SOUDER. If not, before proceeding, and when Mr. Cummings arrives we'll have him give his opening statement at that point after the first panel if he would like. Before proceeding, I would like to take care of some procedural matters first. I ask unanimous consent that all Members have 5 legislative days to submit written statements and questions for the hearing record and that any answers to written questions provided by the witnesses also be included in the record. Without objection, it's so ordered.

Second, I ask unanimous consent that all exhibits, documents and other materials referred to by Members and the witnesses may be included in the hearing record and that all Members be permitted to revise and extend their remarks. Without objection, it is so ordered.

[The prepared statement of Hon. Mark E. Souder follows:]

Opening Statement
Chairman Mark Souder

"Homeland Security Reorganization: What Impact on Federal Law Enforcement and Drug Interdiction?"

Subcommittee on Criminal Justice, Drug Policy, and Human Resources
Committee on Government Reform

June 17, 2002

Good afternoon. Today's hearing is the first we have held since President Bush announced his proposal to create a new cabinet Department of Homeland Security. In that respect, we will be breaking new ground as we begin to consider how best to implement such an ambitious and important reform proposal prior to considering it in the full Government Reform Committee in the coming weeks.

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Service, and the U.S. Coast Guard, which are among the most prominent agencies in the proposed reorganization, have critical missions unrelated to terrorism which cannot be allowed to wane and must be fully maintained. The House has to carefully consider the interrelationship of these law enforcement missions with the demands of homeland security.

The Administration has defined the mission of the proposed new Department solely as one of preventing and responding to acts of terrorism. The concept of "homeland security" has to be defined more broadly to include the many other diverse threats to our nation which are handled on a daily basis by these agencies, as well as other law enforcement activities. It is clear that there is simply too much else at stake for our nation to define the issues solely as ones of terrorism.

Let me illustrate my point with a brief but very clear example of the risks which could be posed when resources are allocated singlemindedly. This map illustrates the deployment of Coast Guard assets prior to the September 11th attacks. They are balanced and allocated to a number of important missions, such as drug interdiction, illegal migrant interdiction, and fisheries enforcement. I believe it is apparent here that a vigorous forward American presence had been maintained in the Caribbean and the Eastern Pacific for counterdrug missions and law enforcement.

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a "goal-line" defense centered on the east and west coasts of the United States itself. In the critical transit zone of the Eastern Pacific, for example, the deployment went from four cutters and two aircraft to a lone cutter.

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This afternoon we have an outstanding panel that will be able to discuss these important and complex issues with the benefit of great personal experience and the freedom to speak forthrightly as private citizens. I thank you all for coming today on short notice to share your insights as we prepare to take up this legislation in the full Committee. We are joined by retired Admiral Robert Kramek, former Commandant of the Coast Guard; Mr. Donnie Marshall, former Administrator of the DEA; Mr. Peter Nunez, former Assistant Secretary of the Treasury for Enforcement; Mr. Douglas Kruhm, former head of the U.S. Border Patrol; and Mr. Sam Banks, former Acting Commissioner of the U.S. Customs Service. It is also a pleasure to be joined today by Mr. Stephen Flynn of the Council on Foreign Relations, whose writings have provided the Subcommittee with many important insights on border security. We look forward to your testimony.

Mr. SOUDER. We now move to our distinguished panel. I want to again thank you. You are all experienced witnesses so I know that it is more for the audience's benefit, but you have 5 minutes. The full statement will be in the record. We may do a couple of rounds here, depending on the timing, and as you also each know because you have been in front of this committee, it's our standard practice to ask our witnesses to testify under oath, and if you will rise and raise your right hand I'll administer the oath.

[Witnesses sworn.]

Mr. SOUDER. Let the record show that the witnesses have all answered in the affirmative. We will now recognize each of you for your opening statements and, once again, in the years I've been in Congress I appreciate the leadership that each of you have given in the departments. We've worked together on lots of different issues and this is arguably the most challenging time for us in government to figure out how to continue to provide the service when they've added a whole new supplementary mission, which was a secondary mission that's now a preeminent mission inside homeland security and how to make sure we cover the other missions and get the synergy and don't accidentally wind up with more committee meetings and less actual efforts on the ground.

With that, I'd like to yield to Admiral Robert Kramek for his opening statement.

STATEMENTS OF ADMIRAL ROBERT E. KRAMEK (RET.), FORMER COMMANDANT, U.S. COAST GUARD; DONNIE MARSHALL, FORMER ADMINISTRATOR, DRUG ENFORCEMENT ADMINISTRATION; PETER K. NUNEZ, FORMER ASSISTANT SECRETARY FOR ENFORCEMENT, U.S. DEPARTMENT OF THE TREASURY; DOUGLAS M. KRUHM, FORMER ASSISTANT COMMISSIONER FOR THE U.S. BORDER PATROL, IMMIGRATION AND NATURALIZATION SERVICE; SAM BANKS, FORMER ACTING COMMISSIONER, U.S. CUSTOMS SERVICE; AND STEPHEN E. FLYNN, JEANE J. KIRKPATRICK SENIOR FELLOW FOR NATIONAL SECURITY STUDIES, COUNCIL ON FOREIGN RELATIONS

Admiral KRAMEK. Thank you, Mr. Chairman and members of the subcommittee, for the opportunity to appear before you today. You've specifically asked me to testify on the impact of the proposed agency on Federal law enforcement activities and narcotics interdiction. As the former Commandant of the Coast Guard and the U.S. interdiction coordinator for the war on drugs, I welcome that opportunity and am prepared to answer your questions, and you've already indicated that my written statement will be included in the record.

Thank you.

Often in response to significant events there's a rush to propose organizational and bureaucratic solutions as an expedient rather than implement new policy and strategy that counters threats to our national interests. Terrorism today is the most significant threat to our national interests since the end of the cold war. And the lessons of history have taught us to rationally and carefully focus our policy, strategy and resources to eliminate threats to na-

tional security. I compliment you and your committee for taking the appropriate time to do this.

This is not the time, however, to strengthen just one aspect of our national security at the expense of weakening others, rather an opportunity to strengthen all, so we've eliminated recognized security vulnerabilities of this great Nation, a Nation that depends on a robust global economy and a maritime transportation system for its well-being and for its defense. As important as the maritime is to this what I have always called an "island nation," it's the least secure of our borders. We have over 95,000 miles of open shoreline and a maritime transportation system that accounts for 95 percent of our overseas trade. Ninety percent of the material for support of any war that we fight goes by sea.

For over a decade improvements to the security and efficiency of our maritime industry and coastal defense have languished and have been relegated to a lower priority in our policies and our budgets. Coastal defense is a Defense Department mission and was last in the priority of all defense missions, and less than 2 percent of the Coast Guard's budget was allocated to the mission of maritime security.

The events of September 11th have changed all of that. As you've indicated in your slide, by the 12th of December the Coast Guard had reprioritized its resources so that 50 percent of all its resources were focused on maritime security. The Coast Guard 2003 budget now proposes 22 percent of all its resources be allocated to this mission and at the same time the Department of Defense is standing up a CINC, Commander in Chief for Northern American Defense.

These are certainly popular and seemingly rational responses to the threat, and you and numerous other committees of our Congress are investigating their purpose and usefulness. With respect to the Coast Guard I offer the following: It has 11 primary mission areas, all which contribute to national security. The Coast Guard is the only agency in any government that's a member of the Armed Forces and a law enforcement agency. This is probably the most important characteristic that's made it such an effective instrument of national security.

The Coast Guard is one of the most efficient and effective agencies in U.S. Government, developing to its present state over 220 years and returns $4 in benefits for every dollar it spends. As a multi-mission agency, it's instantly ready to adapt and concentrate forces and resources on any one of its mission areas, as was demonstrated after the September 11th attack and previously in the war on drugs, the Haitian and Cuban migration programs and significant defense, search and rescue, and environmental safety programs.

The fundamental maritime expertise as a seagoing service is common to all mission areas but cannot sustain increases for long periods of time in any mission area without deleterious effects to others. For decades the Coast Guard has been underfunded and resourced with less people and equipment to do the missions the American people request and deserve. It's only this last year, particularly since September 11th that these resource inadequacies

are being addressed in the areas of operating expenses and replacing aged equipment.

Specifically, I note the following in the fiscal year 2003 budget submitted by the Coast Guard to the Department of Transportation and by the administration: That non-counterterrorist law enforcement missions are reduced approximately on an average 5 percent overall. Examples as a percent of operating budget from fiscal year 2002 and 2003 are drug interdiction is reduced from 18 percent to 13 percent; migration interdiction, 5 percent, 4 percent. Very disturbing to me that maritime safety, which is our whole port State control system for merchant vessels of foreign nations coming into our waters, reduced 13 percent to 5 percent. And on and on. Fisheries enforcement, 16 percent to 12 percent.

While there's no question that an immediate response to the terrorist threats and these changes were necessary, they should not be for the long run. Drug interdiction, migrant interdiction and maritime safety are integral to maritime security of our country. I know that the administration has asked for no funding to startup the new department and spokesmen have gone on record about savings expected by combining various agencies together and they'll be used for the purpose of setting the new department up. I do not agree with this notion. If we're serious about the success and purpose of the new department, then the following needs to be accomplished:

The new department strategic plan should be promulgated, goals should be set, objectives outlined and resource requirements identified to meet a proposed end-state level of increased security, not just increase the security but an end state that is specified. In the case of Coast Guard I contend that the synergies realized during the past several decades of the agency be preserved and strengthened. In my opinion, the American public would disagree with the Coast Guard being disassembled in any way and that the Coast Guard is the best agency to provide maritime security. It can function as well in the Department of Homeland Security as the Department of Transportation. But this should remain a multi-mission agency, both a member of the Armed Forces and a law enforcement agency.

The Commandant of the Coast Guard should remain as he is today, the drug interdiction coordinator for the United States, and that mission's funding should be fully restored. After all, illegal drugs funded terrorist organizations in Afghanistan as well as those in Colombia, Peru and other nations as well, and I think you'll hear from my colleagues on the panel today about that in more detail.

The integrated deepwater acquisition that will restore the Coast Guard's vessels with DOD compatible command, central, communications, computers, intelligence and surveillance and reconnaissance, known as C4ISR, should be accelerated. This is probably the most important tool needed to increase maritime security effectiveness.

In summary, the placement of the Coast Guard in this new department will not have a detrimental impact on other law enforcement missions if the agency is adequately funded and kept as a multi-mission armed force and law enforcement agency. However,

in my opinion, as presently planned and funded, the impact will be detrimental. I know that neither you nor the American people want that. In my opinion, the reorganization is secondary to providing adequate resources to accomplish the mission the Coast Guard's' already presently tasked with.

Thank you, Mr. Chairman.

[The prepared statement of Mr. Kramek follows:]

TESTIMONY OF

ADMIRAL ROBERT E. KRAMEK USCG (RET)
PRESIDENT AMERICAN BUREAU OF SHIPPING, AMERICAS
(COMMANDANT U.S.C.G. 1994-1998)
BEFORE THE
SUBCOMMITTEE ON CRIMINAL JUSTICE,
DRUG POLICY AND HUMAN RELATIONS
JUNE 17, 2002

Mr. Chairman and Members of the Subcommittee, thank you for the opportunity to appear before you today and discuss the issues related to establishing a Department of Homeland Security as a federal response to terrorism.

You have specifically asked me to testify on the impact of the proposed Agency on federal law enforcement activities and narcotics interdiction. As the former Commandant of the U.S. Coast Guard and U.S. Interdiction Coordinator for the War on Drugs, I welcome that opportunity and am prepared to answer your questions. As background for the testimony I offer today, I would like to provide the following information for the record:

Often in response to significant events there is a rush to propose organizational and bureaucratic solutions as an expedient rather then implement new policy and strategy that counters threats to our National Interests. Terrorism is the most significant threat to our National Interests since the end of the Cold War. The lessons of history have taught us to rationally and carefully focus our policy, strategy and resources to eliminate threats to our national security. I complement you, and your committee for taking the time to do this.

This is not the time to strengthen one aspect of our national security at the expense of weakening others; rather an opportunity to strengthen all, so we have eliminated recognized security vulnerabilities of this great nation, a nation that depends on a robust global economy and on the maritime transportation system for its well being and for its defense. As important as the maritime is, to this, our "Island Nation", it is the least secure of our borders. We have over 95,000 miles of open shoreline and a maritime transportation system that accounts for 95% of the overseas trade, 90% of material transportation for major theater war and a contribution $742 billion dollars annually to the Gross Domestic Product (GDP). For over a decade improvements to the security and efficiency of our maritime industry, and coastal defense have languished and been relegated to a lower priority in our policy and budget. Coastal Defense, a Defense Department Mission, was last in the priority of all Defense Missions and less than 2% percent of the "Coast Guard" budget was allocated to Maritime Security. The events of September 11, 2001 have changed all of that. By September 12, the Coast Guard Command reprioritized its resources so that over 50 percent of its resources were focused on that mission. The Coast Guard 2003 budget now proposes 22 percent of all its resources be allocated to this mission. At the same time the Department of Defense is standing up a (CINC) Commander in Chief for North America Defense. These are certainly popular and seemingly rational response to the threat, and you, and numerous other committees of our Congress are investigating their purpose and usefulness.

With respect to the Coast Guard and the proposed new federal domestic reorganization I offer the following:

- The U.S.C.G. has approximately eleven (11) primary mission areas, all of which, to some degree, contribute to our National Security.
- Prior to September 11, 2001, the best Department for the U.S.C.G as a federal agency was the Department of Transportation (DOT). This was not only popular opinion but verified by many studies and commissions throughout the years including GAO studies and Roles and Missions Study Commissions. The Coast Guard's links and synergy to the Nation's inter model transportation system is important. In essence it is part of the "Maritime Industry", an industry vital to our National Interest.
- The U.S.C.G. is the only U.S. Agency that is a member of the Armed Forces and a Law Enforcement Agency. This is probably the most important characteristic that has made it such an effective instrument of National Security with respect to Drug Interdiction, Migrant Interdiction, Protection of our Maritime Resources and 200 miles exclusive economic zone (the largest in the world), Defense Readiness and Maritime Security.
- As an agency comprising approximately 80,000 personnel, 40,000 active duty, 32,000 Auxiliary and 8,000 reservists, it is a force in being and actually the worlds 7th largest Navy, so to speak.
- The U.S.C.G is one of the most efficient and effective agencies in the U.S. Government, returning over 4 dollars in benefits to every 1 dollar it spends.
- As a "Multi Mission" Agency it has the readiness and ability to instantly adapt and concentrate its forces and resources on any of its mission areas, as was demonstrated after 9/11 and previously in the War on Drugs, Haitian and Cuban Migrant Interdiction Programs, and Significant Defense, Search and Rescue and

Environmental Safety events. The fundamental maritime expertise as a sea going service is common to all mission areas...but cannot sustain increases for long periods of time in any mission area without deleterious effects to others.

- For decades the U.S.C.G. has been under funded and under resourced with less people and equipment to do its missions and meet the readiness requirements the American people request and deserve.
- It is only in the last year, and especially since 9/11, that these resource inadequacies are being addressed in areas of operating expenses and replacement of aged equipment with the Integrated Deepwater Acquisition Project, a project that will take ten years to complete. Additional resources will be required for the U.S.C.G. to carry out its increased responsibilities in Maritime Security or other Law Enforcement Missions will suffer.
- Specifically I note in the FY2003 budget submitted, that other non-counter terrorist, law enforcement missions are reduced approximately 5 percent overall. Examples, as a percent of operating budget are from FY2002 to FY2003 are:

Drug Interdiction 18% to 13%

Migrant Interdiction 5% to 4%

Maritime Safety 13% to 5%

Fisheries Enforcement 16% to 12%

Other Law Enforcement 3% to 2%

Maritime Security 1% to 22%

While there is no question, that in immediate response to the terrorist threat these changes were necessary, but not for the long run. Drug interdiction, migrant interdiction and

Maritime safety are integrated to "Maritime Security" and to our national security. I also know that the Administration has asked for no funding to start up the new department and spokesman have gone on record that "savings", expected by combining the various agencies together, will be used for that purpose. I do not agree with that notion. If we are serious about the success and purpose of the new department then the following needs to be accomplished:

Define the new departments

- Strategic plan
- Goals
- Objectives
- Resource requirements

to meet a proposed "end state" level of increased security.

In the case of the U.S.C.G. Coast Guard I contend that the synergies realized during the past several decades as a "multi-mission" agency be preserved and strengthened. The threat to our maritime borders, infrastructure and national security demand the best security the U.S.C.G. can provide, not a compromise at the expense of other important missions.

In my opinion, the American Public would agree that the U.S.C.G is the best agency to provide maritime security. That it can function as well in the Department of Homeland Security as the Department of Transportation but that it should remain a multi mission agency, both a member of the Armed Forces and Law Enforcement agency as it is today and that we provide the U.S.C.G. and other agencies in the new department the resources they will need to do the job right… there is no reasonable alternative to do otherwise.

The commandant should remain the Drug Interdiction Coordinator (USIC) and that mission's funding should be fully restored. After all, illegal drugs funded terrorist organizations in Afghanistan as well as those in Colombia, Peru and other nations as well. The Integrated Deepwater Acquisitions that will restore the Coast Guards Vessels and Aircraft with a DOD compatible (Command, Central, Communications, Computers, Intelligence, Surveillance and Reconnaissance.), C4ISR and weapons system should be accelerated. This is probably the most important tool needed to increase maritime security effectiveness.

In summary, the placement of the U.S.CG in the new department of Homeland Security will not have a detrimental impact on other law enforcement missions if the agency is adequately funded. However, as presently planned and funded the impact will be detrimental. I know that neither you nor the American people agree with this. In my opinion, re-organization is secondary to providing adequate resources to accomplish the mission the U.S.C.G. is presently tasked with.

Mr. SOUDER. Thank you very much for your testimony. We'll now go to Mr. Marshall.

Mr. MARSHALL. Good afternoon, Mr. Chairman, Mr. Cummings and subcommittee members. It is indeed an honor and a privilege for me to appear before you again, this time as a private citizen, to share my views on how the proposed reorganization of the—and consolidation of agencies into the new Department of Homeland Security might impact law enforcement activities other than terrorism, particularly drug interdiction and investigations.

Before I go into my statement I want to thank you, Mr. Chairman, and indeed all of the members of this subcommittee, for your very consistent support over the years to law enforcement and particularly for your support to the dedicated and courageous men and women of my former agency, the Drug Enforcement Administration. Before I left DEA, actually in December 2000, I testified before the House Subcommittee on Crime about the threat posed to our country by the convergence of organized crime, terrorism and drug trafficking.

Well, a lot has happened since December 2000, and since then we think in this country we've all become a lot more aware and able to recognize the threat of terrorism against our country. But I'm afraid that the general public still does not fully understand the important connection between international drug trafficking and global terrorism. This connection that I refer to is really not a new connection because for a long time we have seen terrorist groups in places like Colombia and Peru connected with drug trafficking and we've seen drug trafficking in places like Colombia, Mexico and Southeast Asia use terrorism to further their drug trafficking activities.

I have given a detailed history of the various connections between drug traffickers and terrorism in my written statement. But since my time is limited here right now, I will just say for now that those connections between drug trafficking and terrorism are very real. They are very significant and they will grow in importance as our war against global terrorism proceeds over time.

I believe that through that war against terrorism that ultimately we will be successful in denying State sponsorship to terrorists to the extent that they enjoy it today and as we do that, terrorists won't give up but they will have to turn to alternative sources of funding for these evil conspiracies, and the place that they will likely turn for that funding is crime and particularly drug trafficking. In fact, I believe very strongly that if we are to succeed over the long term against terrorism we must also succeed in our struggle against drug trafficking and organized crime.

Therefore, I believe that it is imperative and even urgent that as we proceed in this war on terrorism that we also maintain a very robust and even a greatly increased effort against organized crime and drug trafficking. We really cannot afford to get behind the power curve on this effort. Otherwise, we could wake up in this country 1 day and find that the connection between crime, drugs, violence and terrorism is out of control. It's happened in other countries and it could happen here. In fact, it almost did happen here in the days of the cocaine cowboys in south Florida in the 1980's.

Now, the challenge that we face right now is one, I think, of organizing and acting to meet the most immediate threat that we face today, and that's the threat of preventing further terrorist attacks and destroying the terrorist organizations that seek to conduct those acts. The most urgent and difficult challenge I believe in pursuing that mission is ensuring that we have an effective and an efficient capability to collect, analyze, disseminate and act upon relevant information.

Now, those are precisely the same skills that we need for effective law enforcement, now and in the future. So as we create the new Department of Homeland Security, we must buildupon existing information sharing capabilities and even create new ones where necessary. We must ensure that we have an effective system to promote cooperation and information sharing and, equally important, we must ensure that the leaders of homeland security agencies and other Federal, State and local law enforcement agencies, that those leaders must ensure that there's an atmosphere and a spirit which facilitates that type of cooperation.

The cooperation that I refer to, while not perfect in the year 2002, is already in fact quite strong among our law enforcement agencies. So I believe that we already have a solid foundation for accomplishing these goals. We have to be careful in the creation of our counterterrorism efforts that we build on those strengths and be careful that we do nothing to diminish these existing capabilities.

In closing, I would like to once again thank the subcommittee and all of the Members and staff for your continuing work to make our country safer. I know that our leaders in Congress and the administration and in State and local governments across the country have a tremendous challenge ahead in meeting this terrorist threat, and I hope that my comments, my statement and my response to your questions today in sharing my viewpoints are in some small way perhaps helpful in preserving our freedom and our values.

I would just like to say at this time may God bless America and may God bless and assist our Nation's leaders as we begin this struggle against terrorism and for the safety of our country. Thank you, and I'll be happy to answer any questions at the appropriate time.

[The prepared statement of Mr. Marshall follows:]

STATEMENT OF DONNIE R. MARSHALL

Before the

U.S. House of Representatives
Committee on Government Reform
Subcommittee on Criminal Justice, Drug Policy and Human Resources

June 17, 2002

Mr. Chairman, Mr. Cummings, Subcommittee members, it is indeed an honor and a privilege to appear before you once again, this time to share my views on how the proposed reorganization and consolidation of the key border and port security agencies into the new Department of Homeland Security might impact the roles these agencies play in federal law enforcement activities other than terrorism, particularly narcotics interdiction. While I am appearing this time as a private citizen, I do not want to let the opportunity pass to thank you, Mr. Chairman, and all the subcommittee members for your consistent support of law enforcement in this country, and particularly for your support to the 9000 dedicated and courageous men and women of the Drug Enforcement Administration. Some subcommittee members may know that in December 2000, about 18 months ago, I testified before the House Judiciary Committee, Subcommittee on Crime concerning the threat posed by the threat posed by the convergence of organized crime, drug trafficking and terrorism. I opened my testimony that day saying that the international drug trafficking organizations that smuggle their poison into our country, and that use terrorist violence to further their criminal activities are, indeed, a threat to the national security of the United States. At that time, my testimony focused on narco-terrorism primarily in Colombia. The Drug Enforcement Administration and the U.S. Intelligence Community simply did not have information suggesting a strong connection between drug trafficking activities and Al Quaeda terrorist activities. But we did realize that drugs, organized crime and terrorism are interconnected, and that in order to have success against one, we must succeed against all.

The events of September 11 have only served to tragically and dramatically emphasize and underscore the importance of fighting these three threats simultaneously and in a coordinated fashion. Since September 11, our eyes have been opened on many of the intricacies surrounding international terrorism. I fear, however, that the general public does still not understand the importance of the connection between international drug trafficking and international terrorism. There has been increased attention focused on that connection recently, primarily by my successor as Administrator of DEA, Asa Hutchinson. That newly focused attention to the connection between illegal drugs and terrorism is both encouraging and frustrating to me, a thirty-year career Special Agent of the Drug Enforcement Administration (DEA), who served the last two years of my career as the head of the agency. It is encouraging because the American people and policy

makers need to know that there *is* a connection. I hope that the public and our policy makers come to fully realize that the connection is significant, that the importance of the connection will grow in the future, and that we must take action against the drug/terror connection if we are to succeed in the war against global terrorism. It is frustrating, however, because we have known for some time that some level of drug-terror connection exists. Yet we have been reluctant to attack drug organizations as terrorists, and terrorist organizations as drug traffickers, sacrificing greater effectiveness in the interest of bureaucratic compartmentalization of the two intricately intertwined issues.

In order to understand today's situation, and how it developed, it is essential to understand a bit about the history of international drug trafficking over the past three decades. Until the early 1960s, the United States was a relatively drug free society, at least in comparison with what we would come to see in the late 1970s and beyond. Drug abuse in our country had been at relatively low levels for several decades prior to that time. When drugs began to become more common in the U.S. in the early 1960s, we as a society simply did not have a widespread base of memory or knowledge about the true dangers of drugs in our society. Because of that, many in our country at that time believed that the increase in drug use was really of no great consequence. Many even used the 1936 movie "Reefer Madness" to ridicule those who warned against the dangers of drug abuse. A significant portion of the public viewed the government's counter drug programs with skepticism, apathy or outright hostility. Those public attitudes were reinforced by the fact that consequences such as overdoses, lost economic productivity and drug related crime and violence did not become highly visible for several years after the rise in drug abuse began.

Law enforcement officials of the time had a better understanding than the general public of the crime and social consequences which would eventually follow, but even law enforcement did not grasp the huge illicit economic potential, the corruption potential nor the terrorist potential which we would face in later years as the international drug trade grew and matured. In fact, law enforcement at the time didn't really even see the problem as a global criminal enterprise. It was treated more as a problem of small businesses and individual entrepreneurs, loosely connected perhaps, but not as the worldwide criminal conspiracy that we later came to understand that it was. Consequently, most law enforcement agencies at the time would work on an isolated investigation, close it out and move on to another case, frequently without delving deeper to determine the true extent of connections between criminal organizations. Typically, the use of informants and undercover work were our standard stock in trade.

But by the late 1970s, as drug abuse became epidemic, as more different types of dangerous drugs were being abused, as the illegal drug business grew from cottage industry to a global business controlled by huge, enormously wealthy international syndicates, more and more observers began to see the consequences of the drug problem in our country. These consequences included massive drug violence, turf wars among criminals, innocent civilians caught in crossfires in the days of the "Cocaine Cowboys" in Florida and the southeastern U.S. The consequences included a rise in property crimes, overdose deaths and injuries, lost business productivity, a rise in child neglect and abuse,

crack babies and heroin babies, and countless tragic wastes of individual lives and individual potential.

Seeing the consequences, by the early 1980s the country began to address the problem more aggressively with a combination of education, prevention, treatment and law enforcement. Aggressive education and prevention programs were started, with direct support and guidance from the White House. In my field, law enforcement, we became more aggressive and sophisticated in our methods. Law enforcement became much more effective in the use of financial investigations, analyzing the connections among criminal groups, constructing historical conspiracies, examining documentary records, computer records, and using sophisticated intelligence analysis tools. By the early to mid 1990s, law enforcement had wiped out the huge Colombian cartels, had eliminated the first wave of Ecstacy, had seen LSD virtually disappear, had all but eliminated southeast Asian heroin from our streets, and had reduced the availability and use of methamphetamine. In the aggregate, the combined measures worked so that by the early 1990s, surveys showed that there were about half the number of regular drug users than at the peak of the drug epidemic in the late 1970s and early 1980s.

By the early to mid 1990s, there were just a couple of small problems with our ability to continue to make progress on the issue. First, with the reductions in drug abuse, and the resulting crime and violence many in our country mistakenly thought we had won the day on the issue. High profile issues like the "Cocaine Cowboys" and crack babies were off the front pages; there were general declines in many types of crime. Both the general public and our elected national leadership relaxed, or as the former ONDCP Director, Barry McCaffrey characterized it, "We took our eye off the ball." Consequently, drug abuse began to rise again. Secondly, by then, illegal drug trafficking had become a highly organized, specialized, compartmentalized and well-financed business, and was much harder to attack. The criminal organizations had specialists in transportation, smuggling, processing, protection and enforcement, retailing, money laundering, and even marketing. So by the time we realized the consequences of relaxing our efforts, the fix had become more complicated and difficult by many multiples, and drug abuse and trafficking was on the rise again.

Along the way, between the early 1970s and the early 1990s, political groups, regional insurgent groups, revolutionary groups and even terrorist groups began to see the illegal drug traffic as a way not only to finance their activities, but also as a weapon to be used against their enemies. The Sendero Luminoso of Peru, the FARC, ELN, M-19 of Colombia, and, later, the Taliban all became involved to greater or lesser degrees in illegal drug trafficking. Traditional drug traffickers in Colombia, Mexico and Southeast Asia became more violent. The lines between revolutionaries, insurgents, terrorists and drug traffickers became blurred, indistinct and confusing. Examples of this blurring of roles abound.

In Colombia, the Fuerzas Armadas Revolutionairos de Colombia (FARC) the Ejercito de Liberation National (ELN) and the M-19 all started out as ideological groups and stayed away from drug trafficking, relying on other means to finance their activities.

But over the years, all of these groups began to derive income from drug trafficking, first by taxing and protecting and later by actually refining, transporting stockpiling and selling cocaine. The Colombian drug criminals entered into terrorism, murdering thousands of police and judicial officials in Colombia, kidnapping public officials murdering a presidential candidate, bombing public buildings and even blowing up a Colombian airliner, killing well over 100 people. These acts were clearly terrorist in nature.

In Peru, the Sendero Luminoso (Shining Path) was involved in taxing and protecting drug trafficking since the early 1980s, and have murdered hundreds of public officials, mostly police and armed forces personnel. The Sendero Luminoso, like their Colombian counterparts, were clearly narco-terrorists. In 1994, the Drug Enforcement Administration lost 5 Special Agents in an airplane crash in the foothills of the Andes Mountains near Santa Lucia, Peru. There were initial reports that the aircraft had been downed by ground fire from the Sendero Luminoso. Subsequent investigation however revealed that the aircraft flew into a mountain valley in unfamiliar terrain, and was unable to maneuver out, and crashed near the base of the steep canyon wall. I went to the crash site along with other personnel from DEA, Peruvian Army and U.S. Army on what began as a rescue mission. We were flown into the site in Russian helicopters operated by the Peruvian Air Force, whose pilots performed courageously and flawlessly. Sadly, when the crash site was reached, it became a salvage and recovery mission, as all 5 Special Agents aboard were killed instantly in the crash. For the entire three days we were at the crash site, our U.S. and Peruvian army personnel were monitoring communications indicating that a Sendero Luminoso party was attempting make their way on the ground to mount an assault on our position as retribution for the success U.S. and Peruvian authorities had been having in wiping out coca processing sites. The Peruvian government arrested the head of the Sendero several years ago, and the organization disappeared for a time. Today however, the Sendero appears to be making a comeback and is expected to become more active.

In Mexico, drug trafficking groups have long been involved in kidnapping, torture and murder along with the assassination and intimidation of public officials and citizens alike. These groups, who even killed a Catholic cardinal, have no political agenda. Their terrorist acts however, have the same effect as politically motivated terrorists: they render political, judicial, economic and commercial institutions ineffective, and destabilize the government and the economy.

In Southeast Asia, the Shan United Army and the Wa State United Army maintained control of their drug empires largely through violence and intimidation, sometimes with political motives and sometimes solely with motives of profiting from the illegal drug traffic.

In Southwest Asia and the Middle East, it is generally accepted and fairly well documented that the Taliban derived profits from illegal drug trafficking. Because of the secretive methods of operation of the Al Quaeda, it has been difficult to penetrate the full extent Al Quaeda involvement in drug trafficking. It is now widely believed, however,

that both the Taliban and the Al Quaeda used drugs not only as a weapon to try to destroy western culture, but also to finance terrorist activities. The Taliban allowed opium production to increase dramatically under their rule, and they derived significant income from it. Even when they banned opium cultivation a few years ago, it was a cynical, largely sham transaction to try to shed their international image as a drug producer. In fact, prior to the cultivation ban, huge quantities of opium had been stockpiled in order to minimize any negative impact on income from the drug trade.

With regard to the Taliban and Al Quaeda terrorists, the profits from drug trafficking were accompanied by a convenient side effect; the illegal heroin traffic, in and of itself, immensely harmed western societies, parts of whom were willing participants in their own decline into the destructive effects of drug addiction.

When speaking of narco-terrorism, we cannot afford to overlook its effects in our own cities and towns and neighborhoods right here in the United States. Too many communities are plagued by drug related violence and too many good and decent citizens are terrorized on a daily basis in their own neighborhoods by violent drug gangs. A few years ago, as Administrator of DEA, I visited a Philadelphia neighborhood referred to as "The Badlands". I was horrified by the stories I heard from residents about rapes, muggings, assaults, murders, robberies, and burglaries, all conducted by drug traffickers and addicts. I was not naïve after over 30 years in law enforcement, but I could not imagine having to live with my family in those conditions. Later, at home, I literally came to tears as I told my own family of the experience. That type of terrorism is every bit as real and horrifying to the citizens of those communities as the World Trade Center and Pentagon images are to the nation as a whole.

When one considers all of these facts together, it is easier to see the connection between drugs and terror. It is easier to understand the meaning of the term "narco-terrorism". It is easy to see that, in a very large sense, some elements in our society have voluntarily paid our enemies very well to provide substances with which we have poisoned ourselves, creating crime and violence and immeasurable other ills in our own society. And then those enemies have, in turn, used those profits to murder even more of us, and to forever change the world in which we live.

We must now consider what the future holds, not only for our security against terrorism, but for our struggle against the tragedy of drug abuse and the crime and violence that accompany drug trafficking. These subjects are inextricably linked. They are linked because drugs and violence go hand in hand. They are linked because violence *is* terrorism, whether it is a hijacked airplane or an elderly woman mugged by street drug traffickers. They are linked because terrorists and drug traffickers are often the same people, or at least closely associated. They are linked because drug trafficking finances terrorism. And they are linked because the techniques used to evade authorities are almost identical in the cases of both drug trafficking and terrorism. Criminal methods used by drug traffickers are also applicable to terrorism, and vice versa.

They are linked because drug trafficking organizations and others in the criminal element in our own cities can provide a fertile recruiting ground for terrorist organizations bent on destroying our country. I have seen reports that Abdullah al Muhajir or Jose Padilla, the accused "dirty bomb" conspirator recently arrested in Chicago had been a member of a Chicago street gang, the Latin Kings, and had an arrest record for drug violations among other things. Since street gangs in general are heavily involved in drug trafficking, it does not take a vivid imagination to see the potential for terrorism and drug trafficking to come together, even on the streets of our own towns and neighborhoods. This is a very disturbing and even alarming possibility, which should make it crystal clear that we cannot fight the war on terrorism in isolation from attacking organized crime and drug trafficking.

For all of those reasons, I believe that we cannot have significant success against terrorism without substantial success against drug abuse and drug trafficking. Over the long term, we *will* be successful in driving terrorist organizations even more underground than they now are. We *will* be successful in denying terrorists state sponsorship to the degree that they now enjoy. As those things happen, terrorists will have to derive more and more of their financing from other means, the most important of which will likely be drug trafficking.

The American people and our elected and appointed leaders need to know that illegal drug trafficking feeds terrorism, just as it feeds crime and violence in our communities, and just as it destroys the families and lives of individual drug abusers. And more importantly, we need to act on that knowledge. While I spent 32 years as a professional drug agent, I know that law enforcement alone is not the answer to the drug problem or the terrorism problem. Aggressive coordinated programs of public awareness, education, prevention, civic action, corporate involvement along with aggressive use of law enforcement and the criminal justice system are essential if we are to carry the day on both of these issues which threaten our way of life. Just as these methods succeeded in reducing drug usage by half between the late 1970s and the early 1990s, they can and will work in the 21st century.

With that extensive background, I will now comment on my personal views on the extent to which the creation of a Department of Homeland Security may or may not impact on other law enforcement activities in our country, with particular emphasis on drug interdiction and investigations. I have considerable experience and knowledge in the conceptual and actual workings of interagency cooperation, law enforcement effectiveness, and government reorganizations. I spent considerable time and effort as Administrator of DEA promoting law enforcement cooperation, not only at the federal level, but also with our state and local law enforcement partners, the same partners who are now essential to our counter-terrorism efforts. I also lived through a major reorganization of our federal counter-drug effort, Presidential Reorganization Plan Number 2, in 1973. That reorganization created DEA from the former Bureau of Narcotics and Dangerous Drugs (BNDD), the Office of Drug Abuse Law Enforcement (ODALE), the Office of National Narcotics Intelligence (ONNI) and the drug investigations component of the U.S. Customs Service.

In my view, the success of any reorganization depends on three basic components:

-Ensuring that the organization is properly placed in the government so that it gets the necessary support to perform its mission.
-Selection of leaders who have a strong commitment to the new organization, who understand the organizational challenges and have the vision, skills and flexibility to meet those challenges.
-The commitment of the professional workforce to both the mission and the new organization.

These three components are closely interrelated, with each depending on the other. For instance, if there is too much dissension between the executive branch and the legislative branch over the creation or placement of the organization, there will likely be less than optimum support from the congress for the new department. The leaders of the new organization must be able to make sense of the widely diverse elements being brought together, set short- and long-term priorities, successfully solve organizational problems, and convince people, both inside and outside the organization that it is the right structure for the mission at hand. The professional workforce must believe in the new organization and its leadership, and must be committed to solving the challenges and problems with which they will inevitably be faced. None of these components presents an insurmountable challenge. In fact, given the nature of the threat we are facing with regard to homeland security issues, I would expect each of these elements to coalesce with a fair degree of ease.

There have been some observers who point out that the agencies coming under the Department of Homeland Security have other functions, which are only peripherally related or not related at all to the issue of homeland security. This is likely true, and over the long term, there will inevitably be some adjustments and perhaps even further transfer of functions in or out of the new department. While this may be somewhat disruptive to certain functions over the short term, such matters would reach a natural equilibrium over time.

I believe that the more difficult and complex problems with regard to homeland security will lie not inside the new department, but in pulling together all of the outside elements necessary for the success of the war against terrorism. I have made the point earlier in my statement that the success of the war on terrorism is closely tied to success against international drug trafficking and organized crime. It is also highly dependent on having effective working relationships and information sharing arrangements with a number of agencies, which will remain outside the Department of Homeland Security. Among those outside elements are the Federal Bureau of Investigation, the Central Intelligence Agency, the National Security Agency, the Drug Enforcement Administration, the Bureau of Alcohol, Tobacco and Firearms, the El Paso Intelligence Center, the National Drug Intelligence Center, Department of Defense elements, the

National Guard Bureau, and the thousands of state and local law enforcement agencies in the United States.

Cooperation and intelligence sharing among these myriad agencies depend on establishing some systematic protocol, and more importantly, a commitment from the various leaders, backed up by action and example, to engender a genuine spirit of cooperation and not just a façade. This will present a formidable challenge because of the different missions of the various agencies, their different cultures, their different objectives, and their different methods of operation. I hasten to point out that these issues exist, by and large, not because of pettiness, jealousy or ill intentions, but because of each organization's genuine belief in their own objectives and methods and mission. I also hasten to say that law enforcement agencies already recognize the importance of cooperation and sharing. In fact, even with all of the issues and problems which we face in this area, law enforcement cooperation at all levels is better today than it has been at any time in my three decade professional tenure. The challenge for the leaders of all of the various agencies is to rise above these obstacles and create an atmosphere which serves both the missions of the individual agencies and the overarching goal of ensuring our citizens protection against terrorism. In fact, while supporting the counter terrorism mission, it is essential, even urgent, that each agency be effective and efficient in its own area of specialty, and that each understands how that specialty fits the counter-terrorism mission.

One case in point is the agency with which I am most intimately familiar, the Drug Enforcement Administration. As I have mentioned earlier in my statement, it is reasonable to expect that terrorists will come to count more and more on drug trafficking to finance their terrorist activities, and that they will come to see street drug gangs as potential recruits in their terrorist campaign against the United States. The DEA, like other agencies, must see and understand how their mission fits homeland security. But they must also unflaggingly pursue their counter-drug mission so that terrorist organizations are denied drug markets, drug proceeds, and drug criminals as potential recruits. If we fail to do so, it is inevitable that terrorist organizations will capitalize on that failure. It is equally vital that organizations like the FBI, Customs, ATF and others pursue their traditional law enforcement missions in an even and sustained fashion, rather than constantly ebbing and surging here and there to meet the perceived crisis of the moment. This approach will require extraordinary discipline and cooperation among the various law enforcement agencies. I said earlier in my statement that, in order to win the war against terrorism, we must essentially win the campaign against illegal drug abuse and trafficking. I believe the same to be true in the areas of organized crime, weapons trafficking, illegal immigration and smuggling.

Finally, we must pursue effective partnerships, information sharing and cooperative investigations with the many state and local law enforcement agencies across the country. These agencies often have unique talents not duplicated in the federal government, they have intimate knowledge of their communities, which can never be duplicated by federal agencies, and they have officers in numbers, which cannot be matched by federal agencies under any circumstances. Federal/State/Local law

enforcement relationships are already very strong in many ways. The key to improving effectiveness in this area is to build on those strong relationships, to allow state and local agencies liberal input into homeland security issues, and to build "national" solutions, not just "federal" solutions.

Such cooperation and partnerships will require constant attention, constant adjustment, constant commitment, and constant effort. Cooperative arrangements and information sharing require tremendous effort, and there are times when it would be easier, though not more productive, for an agency to act alone. But in the absence of cooperation, partnerships and intelligence sharing, the security of our nation cannot be effectively assured. We already have a solid foundation for accomplishing these goals. We must be careful that we build on our strengths, for the very existence of our way of life is in the balance.

In closing, I am reminded of the lyrics in a country song I heard recently: "It's so easy to give advice, when you ain't the one who's gotta pay the price." The current leaders in congress, in the administration, and in towns, cities and communities across our great nation have a tremendous challenge ahead in meeting the terrorist threat. I hope that my comments and viewpoints are in some small way helpful in preserving our freedom and our values. May God bless America, and may God bless and assist our nation's leaders.

Mr. SOUDER. Thank you very much.

Mr. Nunez.

Mr. NUNEZ. Thank you, Mr. Chairman and Mr. Cummings, members of the subcommittee. I would like to add and supplement the written statement that I have made today with a few related points.

First of all, I think this is clearly a historic, perhaps once in a lifetime opportunity for Congress to fix a number of problems within the Federal law enforcement community that have existed for many, many years, and I think it is very important that we take as much time as is possible to make sure we get it right. I understand the President's desire to get a bill before the end of the year, but it is more important that this be done properly than that it be done quickly.

I guess after many years of thinking about the interaction of all of these different Federal agencies, the transformations that have taken place, it is clear to me that there is no perfect solution to the reform and reorganization of Federal law enforcement. It may never be possible to come up with a logical plan that applies equally well to all agencies and all missions and goals.

There are good arguments that can be made in favor of the single mission agencies, if you will, there are good arguments for large multi-purpose agencies. I think what's more important is that the objective is how we balance the competing concerns of, on the one hand, maintaining a focus on high priority crime problems and, on the other hand, how to do so while maintaining some flexibility with our resources, with our budgets and doing all of it as cost effectively and efficiently as possible.

The best way to ensure that a priority is being dealt with properly is to create an organization whose primary purpose is to pursue that objective and then hold it accountable for the results. I assume that is part of the reason why this new Department of Homeland Security is being created.

I think in the past the creation of DEA in 1973 is a perfect example of identifying a major problem and concentrating the resources in one agency. DEA has one priority, that's drugs. The FBI, on the other hand, has been the opposite example. Multiple missions, multiple priorities, too many things are competing with each other for priorities. It's almost a flavor of the month.

I recall going to meetings back in the late 1980's, early 1990's with the Attorney General, suggesting to the FBI that we needed—that we were going to identify a new priority, and the FBI would say, fine, we can do that but tell me what to stop doing. Everything can't be No. 1. And when you look at the FBI's agenda they clearly have a lot of work to do in areas that we care about.

The major concern is that by bringing so many different agencies together in this new department that their non-terrorism responsibilities can get lost in the shuffle. For example, the Secret Service has criminal law jurisdictions having nothing to do with terrorism: Counterfeiting, credit card fraud, other investment fraud or financial crimes. INS clearly has missions beyond terrorism, certainly related: Customs, trade facilitation and enforcement. There are drug enforcement issues, money laundering issues. There's all

kinds of criminal law priorities or interests that need to be protected.

The choice in the past has really been between consolidation and cooperation. We can merge agencies or consolidate them in a way to refocus the resources, and again, 1973, that was the method that brought DEA into creation. But this has also proved in the past to be the most difficult way to do things. It requires a huge effort to overcome the bureaucratic and political obstacles. It is very difficult to do. Since then cooperation and coordination among agencies and departments is the way we have chosen to address these problems.

This is the way the Federal Government has proceeded since the early 1980's with the creation of various multi-agency tasks forces and HIDTA programs and various cross-designation programs. There's a multitude of examples, the Office of National Drug Control Policy itself, this focus on combining the resources of various agencies toward priority objectives without changing the agencies themselves. As I said, it takes a lot of effort but it has been done successfully in the past. But I should point out that transferring different agencies into one department does not necessarily solve the problem or end the debate.

During my time at Treasury in the early 1990's, I was amazed at how often the four principle Treasury agencies managed to keep themselves separate from their sister agencies. They all had their own budgets. They all had their own cars, uniforms, radios, radio frequencies. I mean everything was different. Everything was separate. They had separate offices in every city where they were located. They had in some cases—I remember going to Thailand in the early 1990's, and there was one Secret Service agent and one Customs agent and they had two separate offices, two separate secretaries, two separate xerox machines. Everything was duplicative, with jurisdictional overlaps between Customs and ATF and various other agencies.

And it is not just at Treasury that we've seen this. The same problems exist within the Justice Department, where the FBI seems always to have come out better than its sister Justice agencies in the budget battles over many, many years. INS, on the other hand, always seems to have been at the bottom of the food chain, the stepchild of DOJ for many decades.

So just putting everyone in the same department does not necessarily lead to equal or fair treatment or effective law enforcement. Every agency has a constituency and a support structure, including here in Congress. These entities push the parochial needs of their own agencies without regard to the needs of others. So coordination within this new department may be as difficult as coordination between agencies in different departments. The fact that the FBI and INS were both part the Justice Department on and before September 11th doesn't seem to have helped them share information or work together to deal with the threat of terrorism.

Consolidation of inspectors is another issue. I've discussed that in my written statement. I won't go over it any more. I mean, there is, it seems to me, a certain logic to taking Immigration inspectors and Customs inspectors and combining them in a generic special force. They are already cross-designated at most ports of entry. They do the same work, yet we have two separate chains of com-

mand, two separate everything, and my experience in the U.S. attorney's office in San Diego for many years was that it was quite ineffective to try to bring these two inspections forces into some sort of balance.

So I believe that some kind of consolidation of the inspection services makes sense. But the critical thing is to try to do it in such a way that the agencies that rely upon them, whether it's Customs or Immigration or DEA, the FBI, that there is a mechanism in place to ensure that the inspection agencies can communicate properly with the agencies they support.

The creation of this new Department of Homeland Security and the transfer of dozens of agencies from other departments is obviously a huge undertaking, involving a whole range of issues, some advantages, some potential disadvantages. The issue is whether the subjugation of the mission, original missions of all of these disparate agencies to the priority mission of homeland security can be done without damaging the purposes for which these agencies were originally created and I think for which really we continue to want them to perform.

So can traditional law enforcement's function survive this new priority? The answer has to be yes. The question is how do we do it?

Thank you, Mr. Chairman.

[The prepared statement of Mr. Nunez follows:]

STATEMENT OF PETER K. NUNEZ

Before

House of Representatives
Committee on Government Reform
Subcommittee on Criminal justice, Drug Policy, and Human Resources

June 17, 2002

Thank you for inviting me to testify here today concerning the potential impact of homeland security agency reorganization on federal law enforcement activities unrelated to terrorism, and narcotics interdiction. The reorganization of federal law enforcement agencies is a subject I have studied for almost three decades now, since I first became a federal prosecutor in San Diego, California, in 1972. President Bush's proposal to create a Department of Homeland Security provides for the Congress and the people of the United States the first opportunity since the creation of the Drug Enforcement Administration in 1973 to do a fundamental review of the current structure of the federal law enforcement family, and to realign these agencies to meet 21st Century demands.

My perspective on reorganization is based primarily on the sixteen years I spent as a federal prosecutor in San Diego beginning in 1972, including the six and a half years I served as the United States Attorney for the Southern District of California under President Ronald Reagan (1982-1988). This experience was supplemented by my service as the Assistant Secretary of the Treasury for Enforcement during the first Bush Administration (1990-1993). For the past six years I have continued to study these issues as a lecturer at the University of San Diego, teaching classes relating to International Law Enforcement and the Politics of Immigration Policy.

The criminal caseload in San Diego during my career was, and continues to be, dominated by cross-border crimes. Chief among them are drug smuggling, illegal immigration, and Customs violations. Drug and immigration violations constitute 85-90% of the cases prosecuted each year. In addition, the San Diego U. S. Attorney's Office also prosecutes the full range of other federal crimes that would be found throughout the federal system – bank robberies, postal offenses, tax offenses, white collar crimes (especially government procurement and contract fraud) – in short, everything you would expect to find in the seventh largest city in the United States. As a result, every federal law enforcement agency is represented in San Diego, and I have worked with all of them during my career in the U.S. Attorneys' Office.

The President's proposal to transfer a number of federal law enforcement agencies to a new Department of Homeland Security is a good start toward the

creation of a more effective and efficient law enforcement structure. But some aspects of the proposal raise several issues that must be resolved. The subject this committee is raising in this hearing today is one of the most important: how will this reorganization affect law enforcement issues unrelated to terrorism?

How will this reorganization affect our decades-long effort to reduce drug trafficking, especially at the border?

How will this reorganization affect our efforts to stop illegal immigration, an effort which has been woefully inadequate since1965 when Congress fundamentally changed our immigration policy, and which has been made worse every time Congress has attempted to "reform" immigration law since then (1986, 1990, 1996).

How will this reorganization affect the ability of the Customs Service to implement trade policy, especially at our border with Mexico under NAFTA?

How will this reorganization affect the ability of the Federal Bureau of Investigation to simultaneously carry out its criminal law enforcement jurisdiction (the enforcement of over 250 laws) and its anti-terrorism responsibilities?

And with regard to the FBI, does it make sense to transfer dozens of other agencies into this new department, and to omit the one agency with the most important anti-terrorism responsibilities? If the whole purpose of this reorganization is to consolidate all of the agencies having even the remotest nexus to combating terrorism into one department, how can the "lead" agency be left out?

At what point does an agency become so diverse in its responsibilities that it can no longer function effectively? How does the FBI prioritize its many jurisdictional mandates? How does one agency function when it has multiple priorities? How does the FBI continue to focus on terrorism, organized crime, major international drug trafficking organizations, multi-billion dollar fraud in federal government programs (defense contract fraud, government procurement fraud, health care program fraud), securities fraud, financial institution fraud, civil rights violations, etc.)?

Given the fact that Congress has given the Office of National Drug Control Policy (ONDCP) the responsibility of coordinating the drug enforcement efforts of all agencies of the federal government, including those that would be transferred to the new Department of Homeland Security, how will that be reconciled with the responsibility to combat terrorism? Will the "drug czar" still be able to "decertify" an agency budget that he believes does not adequately address counter drug requirements? What happens when there is a conflict between an agency's counter terrorism efforts and its drug enforcement mission?

How will this reorganization plan affect the concurrent effort to reform the Immigration and Naturalization Service? If the INS is split into two separate agencies, one devoted to immigration enforcement and the other devoted to immigration and naturalization service, will both new agencies be included in the new Department of Homeland Security? And will the Justice Department and the Attorney General relinquish control of the immigration courts and judges, along with all other present and proposed DOJ components designed to oversee and/or support immigration matters (for example, the proposed new associate attorney general for immigration policy)?

Is it finally time to merge all border inspectors into one organization? Given the fact that all Customs, Immigration and Agriculture inspectors at ports of entry are cross-designated so that they can enforce each other's laws, does it make any sense to continue the artificial and pointless distinction between their respective agency designations? How many millions, if not billions, of dollars could be saved, and how much more efficient could the inspectors become, if they were merged into one inspection force, thus eliminating multiple chains of command, supervisory and administrative systems, and logistical requirements? Certainly our inspectors are intelligent enough to carry out these multiple responsibilities; in fact, they already do it under the artifice of cross-designation.

We must remember the lessons learned from the incomplete reorganization plan that led to the creation of DEA in 1973. The original proposal contemplated the merger of the inspection forces from Customs and INS. That part of the plan was dropped at the last moment, allegedly because the two unions representing the two groups of inspectors could not agree on which of them would survive and which would disappear. Over the years, this has resulted in an on-going tension between the two groups of inspectors, and a tremendous waste of time trying to coordinate the efforts of the two groups. While at times the two agencies have managed to coordinate their efforts, at other times they have been unable to work together cooperatively. Generally speaking, Customs has been much more successful than INS in obtaining adequate inspection resources from Congress, oft-times resulting in significant imbalances in the number of inspectors that the two agencies could deploy at any given time. On many occasions INS has not had enough inspectors to meet its shared responsibilities with Customs, causing significant disruptions both to the public and to the mission of both agencies.

Another lesson learned from the 1973 reorganization that led to the creation of DEA was that separating the drug interdiction/border inspection function provided by Customs, INS, and the Border Patrol (and to a lesser extent, the Coast Guard), from the drug investigation function posited at DEA, led to a dysfunctional drug enforcement effort. Combined with the chronic shortage of agents at DEA during the 1970's and into the '80's, this separation of interdiction from investigation meant that border drug seizures were almost certainly not going to be investigated properly, and the ability to exploit the intelligence

potential generated from those border seizures would be entirely missing from our counter drug efforts. DEA was unable to properly mobilize its resources against the growing threat of Mexican drug trafficking organizations, which, during this period of time, grew unimpeded by both Mexican and American law enforcement authorities into what are today some of the most formidable criminal enterprises in the world (the Arellano-Felix Organization being the most obvious, but by no means the only, example).

This problem was finally addressed beginning in the 1980's with the creation of multi-agency task forces, including the Organized Crime Drug Enforcement Task Forces (OCDETF), Operation Alliance (1986), the High Intensity Drug Trafficking Area (HIDTA) program (1989), and the reintroduction of Customs Enforcement (Office of Investigations) to border drug enforcement through the creation of DEA/Customs port of entry cross-designated investigative groups. The ability of Customs investigators to interact with its own inspectors, as well as those from INS and the Border Patrol, was a hugely successful development. Among other advantages it has allowed DEA and the FBI to concentrate their resources on the most serious drug trafficking groups. The FBI, for example, seems to have taken over the lead responsibilities for dealing with the Arellano-Felix organization, with both DEA and Customs participation.

As this proposed reorganization goes forward, you must make sure that the interdiction functions provided by Customs and INS inspectors, Border Patrol agents, and the Coast Guard are not separated from those involved in the investigation of drug offenses, whether that be DEA, Customs Enforcement, or the FBI. Even if the inspection functions now performed by Customs, INS, and Agriculture are merged into one inspection force, there must be no impediments or obstacles between them and those agencies charged with investigating drug offenses.

By the same token, if the FBI is going to continue to be involved in drug enforcement, steps must be taken to ensure that their attention to anti-terrorism does not conflict with or diminish their commitment to drug enforcement. While the FBI's involvement in drug enforcement has been noteworthy and valuable since they acquired this added responsibility in 1981, it may be time to reexamine that role in light of their higher responsibilities regarding terrorism. In short, the time may have come to reduce or transfer some of its criminal law jurisdiction to other agencies. Chief among them would be to transfer its drug enforcement resources to DEA and/or Customs as the circumstances warrant.

The primary justification for bringing the FBI into drug enforcement in 1981 was simply that it was the quickest way of increasing the numbers of trained investigators available to augment the efforts of DEA. With the stroke of a pen President Reagan added 2000 trained criminal investigators to the drug enforcement effort. To have added that many new investigators to DEA would have taken years through the normal recruiting, hiring, and training process.

Certainly the FBI also brought to the table a multitude of talents and capabilities developed in battling organized crime and other sophisticated criminals, and they have performed their drug investigations in an exemplary fashion. But there are only so many priorities that any agency can manage, and as Director Mueller himself acknowledged several months ago, it will be necessary for the FBI to give up or diminish some of the responsibilities it has acquired over the past century in order to focus on the threat of terrorism. Accordingly, it makes sense to transfer those FBI resources devoted to drug enforcement to other federal agencies so the FBI can continue its focus on other priorities.

At the same time, many of the other criminal law responsibilities of the FBI could be transferred to other agencies with which they now share responsibilities. All non-terrorist related bombing investigations should be transferred to the Bureau of Alcohol, Tobacco and Firearms. All crimes relating to financial institutions should be transferred to the Treasury Department, which otherwise already has primary responsibility for regulating banks and financial institutions (as well as non-bank financial institutions). The Secretary of the Treasury should not have to go hat-in-hand to the Attorney General or the FBI begging for help when the savings and loan industry begins to implode, as we saw happen in the late 1980's. The Treasury Department's responsibility for the safety and soundness of the nation's financial system should not be dependent on the availability of resources that work for some other department of the government, which may, at any given time, have its own set of priorities to deal with, especially if those priorities are different. How can the FBI be expected to respond to the next law enforcement crisis while it is trying to prevent the next World Trade Center disaster?

Finally, there are trade offs involved when designing agencies with single or multiple missions. Single mission agencies, such as DEA, guarantee that there will at least be a certain level of attention given to a particular problem, regardless of competing priorities. The only way to ensure that there will always be someone fighting drugs is to maintain an agency with that single purpose. The only way to guarantee that there will always be someone available to deal with the next "super note" is to create an agency who's job it is to deal with counterfeiting.

On the other hand, agencies with multiple responsibilities are always in the business of deciding on a set of priorities, which means that some things get pushed to the top of the list and some things sink to the bottom. When an agency becomes so big that it can no longer address all of the crime problems that we expect, then something will suffer. The advantage of a large, multiple purpose agency is that, in a crisis, it has the flexibility to reassign resources to the new problem. But that necessarily means taking resources away from something else that required attention, at least until the new emergency arrived.

In the coming debate on the creation of a new Department of Homeland Security, it is imperative that we take the time to implement the reorganization in such a way that we do not sacrifice other criminal priorities, but rather look for ways to accommodate all the requirements set forth by Congress for the enforcement of federal criminal law.

Thank you for allowing me to offer my perspectives on this important issue.

Mr. SOUDER. Thank you very much.

Mr. Kruhm.

Mr. KRUHM. Chairman Souder, members of the subcommittee, thanks for inviting me to speak this afternoon on agency missions and their new responsibilities under the proposed Department of Homeland Security. I will abbreviate my prepared text to stay within my allotted time. I trust you will get an opportunity to review my comments, and if you have any questions at a later time I will be willing to assist you in any way that I can.

I am aware of your and your staff's concern that the new department and its suborganizations will be so counterterrorism focused that they will lose their ability to continue with their historical missions. I don't believe that will be the case. What I see as an inhibitor of mission performance is the same issues that have plagued the agencies for some time. For the Immigration and Naturalization Service and the U.S. Border Patrol it is the continued attempt to respond to the dual system of immigration, one legal, one illegal. It hasn't worked, and I do not believe it ever will.

The tragic consequence of the dual system is the dehumanization of the migrants, the facilitation of other criminal activities, and the adverse impact on organizations like DEA, Customs, Coast Guard, Federal prosecutors and others. I don't feel these other organizations can be truly effective until the impact of illegal migration is resolved.

In the case of the Border Patrol, their mission is to interdict whatever attempts to enter this country illegally between ports of entry through its activities on the border and in other operations. They have done a good job in the face of an immigration policy designed for failure.

Consider what they have been up against with the statistics of the Border Patrol making their 40 millionth arrest late in fiscal year 2000 or early 2001. Drug smugglers, terrorists, criminals and other nefarious characters have been intermingled in those 40 million people. The Border Patrol has arrested a lot, but many have eluded detection. Over time the bad guys have learned to use migrants as cover for other criminal operations. They also take away the migrants' humanity through extortion, robbery, rape and murder.

Sixteen migrants were found dead this past week in the desert near Tucson, Arizona, a mother and two children this weekend. That is just 1 week in just one location. In addition, the migrants provide the smugglers with the cashflow to maintain their operation so that they can make even greater profit from others who want illegal access to the United States.

So you see counterterrorism operations, at least for the Border Patrol, has always been part of the mission. The job of the Border Patrol is to interdict whatever enters illegally. If it is not a migrant case, then the Border Patrol hands the case off to appropriate investigative organizations, whether it be Customs, DEA, FBI or other responsible agencies or departments.

An issue that Congress and Homeland Security should be concerned about is mission creep. I do not believe this government can afford to have all of the interested border agencies lined up on a bluff, sitting in their cars, waiting for their individual case to come

along, nor do we need two armed enforcement groups in the same area unknown to each other. Homeland Security's leadership will only be effective when it has a clear mission statement, one that ensures the protection of our free society and its citizens, a mission statement that understands each independent role and the common responsibilities of its organizations. It must allow this new department to be precise, responsive and agile, not a massive organization, rather one able to respond to the needs of and ensure the success of the appropriate organizations already established.

I would hope the Department of Homeland Security would be as Mohammad Ali described his boxing style, float like a butterfly, sting like a bee.

Again, thank you for this opportunity to discuss some of my observations from working with many of the agencies involved in the security of the United States of America.

[The prepared statement of Mr. Kruhm follows:]

Opening statement of Douglas M. Kruhm, Chief US Border Patrol (Retired)
Before the House Government Reform Committee's Subcommittee on Criminal Justice, Drug Policy, and Human Resources.

June 17, 2002

Chairman Souder, Members of the Sub Committee, thanks for the opportunity to speak on the proposed Department of Homeland Security. There are many areas I would like to address such as the new departments "Mission Statement", accountability by position, dual responsibilities, conflicting responsibilities, mission creep, technology bottlenecks and inter-agency or inter-department linkages as well as others. Hopefully we can identify some of the areas of critical concern to you and of absolute necessity to the security of this country. My comments are not only based upon my experience with the Immigration & Naturalization Service and US Border Patrol but with many other Departments and Agencies as well as some recent border threat assessments for other Governments. This is serious business and I appreciate your desire to "get it right".

In my opinion, the first thing that needs to be reviewed is the mission statement of the new department and each component within the department. This is to ensure operational compatibility and accountability. This is because operational priorities will flow from the mission statement. They must be clearly understood by all Homeland Security employees as well as the oversight committees here in Congress. This will allow the organization to stay focused through the thick and thin of whatever the future brings.

The second important issue for the new Department is it's communication or linkages with contributing organizations that

remain outside of the Department's organizational structure. Many of these linkages will be of such importance that I visualize senior level officials with access to the leadership of both Homeland Security and these other agencies. These linkages must be precise and as close to being instantaneous as possible. This is to ensure success and accountability.

Some the organizations being brought into Homeland Security have significant unresolved issues. Duel and sometimes-conflicting responsibilities are exploited by criminal organizations operating across our international borders. I am speaking of the organizations responsible for the flow of people and commerce across the borders. The pressure is constant and intense to facilitate that flow. That facilitation has come at the expense of increased illegal migration and drug flow into this country.

I am aware of your concerns the Homeland Security Department's national security role will come at the expense of drug control efforts. Lets look at the relationship of INS to both national security and drug trafficking.

The real threat to national security and drug control is of our dual system of Immigration, one legal and one illegal. These two systems are intertwined in the threat of criminal, drug and terrorism activity. On the legal side there is the Immigration & Nationality Law that regulates the flow of immigrants, visitors and Naturalization for Citizenship. In conflict with that are both the pressures to facilitate that flow at our borders, airports and seaports and the response to the ramifications of illegal immigration. Those ramifications include issues like increased applications for benefits, changes of status and the deportation and detentions functions of the INS to name a few.

Our illegal system has evolved to the point where migrants have a clear choice. They can wait for their turn, pay the fees and enter

the US with dignity and safety or risk the gauntlet of illegal immigration. The illegal attempt is often through a criminal organization, by fraud or being smuggled into the US by boat, railroad, container truck or walking through the desert. Just utilizing the criminal smuggling organization subjects the migrants to robbery, extortion, human bondage, rape and even murder at any point during their journey. At least 16 died this last week in the desert on the US side of the border near Tucson, AZ. That is just one week and just one location.

If the undocumented migrants make it, their risk is justified by the knowledge that they will eventually get enough political support for a legal work authorization or amnesty program. That gives others waiting, their encouragement to try the illegal system and the whole process begins anew.

There are two points here.

One - If we are going to eventually give legal status, why allow them to dehumanize themselves and risk death at the hands of the smuggling organizations.

Two - The threat to this country is not in the vast majority of migrants seeking a better way of life, but the threat is from the criminal organizations that flourish because our of our dual immigration policy. These organizations feed off of the migrants, drug traffickers and other criminal endeavors. They use the migrants as cover for their more lucrative activity. There are areas of the border (they include both sides) that I would call "Criminal Enterprise Zones". This is where the main economy is smuggling, the smuggling of anything or anyone. If it makes a buck the smugglers will bring it across. No matter the contraband. No matter the consequence.

In the area of mission creep, I will only say I hope the Secretary of the Department of Homeland Security has the strength to ensure each of the border organizations within the Department stay focused on their assigned tasks. This government can ill afford to have a Border Patrol Car, Customs Car, DEA Car and whoever else sitting on the same bluff waiting for their respective case to come along. We need one interdiction organization and they in turn must have the authority for their tasks and investigative support from an appropriate agency.

I have discussed the INS conflicts. You must be aware that these competing interest also exist in other organizations proposed for this new department. My only advice is if it is to be a fine line between facilitation and security, then it must be a very clear fine line.

I further recommend the creation of a technology-clearing house that responds to agency "mission based" requirements. It should also be the sole source contact for the technology industry, eliminating "shopping around" with associated contracting law conflicts. This should be an independent organization responsible for the analysis of availability, viability (will it work in the mountains and canyons) and cost effectiveness. This function is duplicated throughout government and I believe it could be streamlined and more responsive to both the agency requirements as well as the industry.

In conclusion, I hope some of my comments result in a clear and successful mission for the Department of Homeland Security. I also hope that through this new initiative not only will the terrorist threat be diminished but some of the long standing and unresolved issues of our nation can be successfully resolved at the same time. We along with our neighbors owe this to our citizens and future generations.

Mr. SOUDER. Thank you very much.

Mr. Banks.

Mr. BANKS. Chairman Souder, Mr. Cummings, members of the subcommittee, I want to thank you for this opportunity to testify. My remarks are going to reflect a perspective of having spent 28 years in the U.S. Customs Service and having the opportunity and the pleasure at times of working with every one of the agencies and the people at this table.

It's my belief that the proposed consolidation of the border and transportation security agencies, including Customs, into a new Department of Homeland Security would be a positive step for the protection of this country and the American people.

Now, as much as I support the concept of this consolidation, I think your subcommittee is absolutely correct in being concerned about the effect that this reorganization could have on the vast array of law enforcement issues, terrorism, narcotics and a huge number of other things that are important for the security of this border and the American people.

Customs enforces a whole variety of laws. They look for weapons of mass destruction, they do money laundering, they do narcotics and narcotics investigations. But Customs also enforces some 400 laws for 40 other agencies at our borders, and many of those laws concern public health and safety issues. Many concern trade laws and even collecting $20 billion in duty every year. It is absolutely essential that these activities continue into the future under any reorganization.

I believe there are just a few critical factors that really need to be kept in mind as the review goes forward about this new Department of Homeland Security and an amalgamation of these agencies in order to ensure that all of these missions are sustained under a consolidation.

The first and foremost point is that—now, this is Customs. Customs is a complete entity that needs to be moved intact into the new Homeland Security Department. There have been discussions of perhaps trade issues or investigative issues or other things could be potentially split apart or moved out of the agency. Well, I guess my recommendation to you is that the field units and the work in Customs all focused on border is so inextricably intertwined that it would be a huge mistake to split this apart. The trade components, the trade experts in the agency, and the investigative components all share vital information across all of those organizational lines and share intelligence. The criminal investigators and trade experts are so interdependent that if you separate them you really do serious harm to the total enforcement picture. Splitting the agency as well would only fragment operations.

Is there then going to be another agency that you're going to deal with at the border and that the international trade community and that the international airlines would have to contend with? So No. 1 is take it over whole as a component to support border security in cooperation with the other agencies represented here.

The second point is that Customs runs many of the automation systems that are critical to our borders. These are the systems that perform all the enforcement screenings of virtually every person, virtually every piece of cargo, virtually every conveyance that

crosses the U.S. borders. These automation systems support not just U.S. Customs but also INS and a whole series, like 28 other law enforcement agencies within the U.S. Government. These automation systems are so important that they run 24 hours a day, 7 days a week, 365 days a year, and they are absolutely essential, not just for enforcement but also to ensure that trade and travelers are facilitated across our borders.

So I guess the point that I would make to you is this is a fundamental critical issue to sustain those information systems, to support the entire border, and they need to be taken over into this new agency as well.

The third and last point that I would make to you is that U.S. Customs Service has established longstanding partnerships with the business community that is engaged in international trade. Now, these partnerships have been essential to make sure that trade flows smoothly across our borders, because even a few hour delay at our land borders can shut down manufacturing plants. But these partnerships have also been instrumental in improving the enforcement at our borders. Customs has reached out to the airlines and the ocean carriers to improve the security process of their international supply chain, and companies as a result of these partnerships have added more resources to improve the security of the whole process.

Most recently, Commissioner Bonner launched something called a Customs Trade Partnership Against Terrorism, and the whole idea is to have international companies involved in the transportation and the shipping of international goods, focus on how to improve the security to make sure that nothing illicit gets put inside those containers on board those vessels or on those aircraft. These sorts of partnerships work both ways. They support both the enforcement side and they support the trade side.

So in summary, I guess I would say that going toward the Department of Homeland Security should achieve greater efficiencies, should achieve greater information sharing, should eliminate a lot of duplication. But in order to do this, in order to reach its real potential, I think it's absolutely essential that this thing be done thoughtfully and that the best practices that exist within all of these departments are carefully screened and incorporated into this new department so that we really do serve to improve the enforcement at our borders.

Thank you very much.

[The prepared statement of Mr. Banks follows:]

STATEMENT BY
SAMUEL H. BANKS
SENIOR VICE PRESIDENT
SANDLER AND TRAVIS TRADE ADVISORY SERVICES

HEARING ON THE POTENTIAL IMPACT OF HOMELAND SECURITY AGENCY REORGANIZATION ON FEDERAL LAW ENFORCEMENT ACTIVITIES
HOUSE GOVERNMENT REFORM COMMITTEE
SUBCOMMITTEE ON CRIMINAL JUSTICE, DRUG POLICY, AND HUMAN RESOURCES

JUNE 17, 2002

Chairman Souder, members of the Subcommittee, thank you for this opportunity to testify on the impact of the homeland security reorganization on federal law enforcement activities.

Mr. Chairman, my remarks will reflect a perspective of having spent 28 years with the U.S. Customs Service and ultimately serving as the Deputy Commissioner and Acting Commissioner of the agency prior to my retirement.

It is my belief that the proposed consolidation of the border and transportation security agencies, including Customs, into a new Department of Homeland Security would be a positive step for the protection of this country and the American people.

Even though I support this consolidation of border agencies, your Subcommittee is correct in being concerned about the potential affect such reorganization might have on the many activities performed by these agencies that extend beyond terrorism and drug enforcement.

Certainly, U.S. Customs has a diverse and broad mission and is responsible for more than anti-terrorism and drug enforcement at our borders. Customs collects over $20 billion in revenue, is the source of the nation's trade statistics, and enforces numerous trade laws. Customs officers act on behalf of over 40 other government agencies at the nation's borders, enforcing some 400 laws that include public health and safety, social, economic, environmental, and other responsibilities. These activities are important for the protection of the American public and our economy, and it is essential that these functions continue in the future.

The merger of Customs into a new Homeland Security Department does not mean that Customs would halt these activities or even diminish attention to these responsibilities.

There are a few critical principles that the Subcommittee could insist upon as this new Department is being formulated:

1. **The single most important factor is to ensure the Customs Service is kept intact.**

There have been a number of statements that the trade responsibilities or commercial operations of Customs could be separated and placed elsewhere in government. It would be a huge mistake to split the agency, and this viewpoint is widely held within the international business community.

The trade and enforcement functions of Customs are inextricably linked. Most of Customs field officers fulfill both trade and enforcement responsibilities concurrently and to divide these functions would diminish the attention and the focus on the entire mission.

Customs has trade experts that collect duties and ensure importers comply with trade rules. These trade experts also know the corporate structures and ownership of the importers, and they know the established business practices, typical trade patterns and usual business relationships of these companies – this knowledge is invaluable to the enforcement and investigative components of Customs. This knowledge is also essential to protect against fraud, against narcotics trafficking and against terrorism.

Further, any split would require yet another agency to be established at the border which would only increase inefficiencies and undermine the benefits anticipated as a result of consolidation.

2. **The second most critical factor is that the information technology systems operated by Customs are not affected.**

Customs Automated Commercial System (ACS) operates 365 days a year, 24 hours a day. It processes 98.9% of all imported merchandise and is the lynchpin of an efficient and effective border for trade. The international business community and the economy are highly dependant on ACS; actual experience has proven that a system slowdown can result in factory closings within hours. The protection of our borders is equally dependant on the system as nearly 100% of all imports are subject to enforcement screening and targeting by this system.

These systems support not only Customs but nearly all federal border agencies and these systems need to be sustained and enhanced to ensure that all border responsibilities are fulfilled in the future.

Customs also operates the Treasury Enforcement Communications System (TECS) which is essential to passenger operations at the nation's airports and land borders. It is connected to virtually all international airlines and it permits efficient processing while it simultaneously conducts enforcement checks on all passengers entering the country.

Customs is in the process of modernizing the trade systems, and it is essential that this effort continue regardless of whether Customs is merged into the new Department. In fact, the new Homeland Security Department should seriously consider adopting the Customs information systems as the core platform for all of Homeland Security.

3. Customs has established a partnership and close relationship with the international trade community, and it is essential that this be sustained under any reorganization.

Customs has demonstrated a willingness to work with the importers, exporters, transportation companies, etc. in promulgating new programs, new regulations, and new information systems. Customs does not relinquish its authorities nor compromise its enforcement responsibilities, but, where reasonable, it cooperates with its stakeholders to ensure that its programs and systems work effectively and efficiently.

Customs has also been a leader in crafting cooperative programs with industry to achieve its enforcement objectives. This began with narcotics enforcement when Customs encouraged airlines and ocean carriers to improve their internal security programs and prevent contraband from being inadvertently carried on board their aircraft and vessels. This expanded to promoting improved security programs among the international business community to prevent contraband from being concealed within their shipments.

Most recently, Commissioner Bonner launched the Customs-Trade Partnership Against Terrorism (C-TPAT) which was jointly developed with the international trade community to improve security of the international supply chain, from the loading docks of foreign vendors to improved personnel screening to U.S. port facilities.

Customs has been willing to make a place at the table for the international business community in the design of its automated systems to the promulgation of new rules. This partnership has served Customs and the American public well and it needs to be continued.

Mr. Chairman, I am firmly of the belief that the reorganization of the new Department of Homeland Security can be a good thing for America and your Subcommittee can contribute significantly to its success by ensuring that the best practices and best programs that currently exist are carried forward. We do not have to sacrifice the many positive contributions by Customs and by the other agencies destined for this new Department if the reorganization is crafted carefully and thoughtfully.

I thank you again for this opportunity to appear before you.

Mr. SOUDER. Thank you.

Dr. Flynn.

Mr. FLYNN. Thank you, Mr. Chairman. It is a privilege to be here today to talk about this very important topic. I think I come to you by way of spending the last decade looking at issues, many of which have come before this committee, with regard to organized crime as a professor at the U.S. Coast Guard Academy and other places and also with work that I did with the Hart-Rudman Commission specifically on the issues of homeland security. If there is one thing I took away from that experience with that commission, it is that what we saw on September 11th is how warfare will be conducted in the 21st century, that one of the ironies of the end of the cold war has made it such that going toe to toe with America's conventional military force is a fool's game and America is the Goliath and our adversaries are going to be creative Davids.

And how do they do this? What's the format of the warfare? The format looks a lot like organized crime. As we've heard already by some of the other distinguished members here, it is essentially the lubricant for conducting your terrorist—for both raising the cash for the terrorist campaign as well as getting access into the United States. There is a real convergence on that issue. The nature of organized crime, as we found in the 1990's, is that it's rare that criminal organizations are monolithic or mono-focused. They tend to diversify. And what we see is that Colombians are not only involved with cargo theft but they're involved with narcotics trafficking in south Florida, but they're involved with things like cargo theft, high technology, moving from a free trade zone to the Port of Miami. Similar convergence with Chinese gangs that are not just in the business of smuggling heroin into the United States but move migrants and also move pirated software and a whole sundry of other things.

So if we're going to have a war on terrorism, we really have to be looking at organized crime as very much linked with that. And if we're going to talk about combatting organized crime, we have to see it as much broader than just narcotics interdiction, and that leads us to who are the front line agencies who are going to be wrestling with that, with those challenges, and they are in fact many of the agencies that the administration has recommended be put under this new home, the Office of Homeland Security.

I would say we've seen three key developments here with regard to organized crime in the 1990's. One is the diversification I mentioned. The second is globalization, and the third is the crime terrorism-guerrilla nexus. Now, these are important relative to the subject of the hearing today for the following: The challenges of terrorism and narcotic interdiction simply cannot be isolated from the issue of organized crime or generally. And the corollary that flows from this conclusion is that many of the enforcement activities that target crime, such as cargo theft, tax evasion, migrant smuggling, and Internet fraud, will reap important dividends in fighting narcotics smuggling and terrorist activities in the U.S. homeland.

Now the complexity of the Homeland Security agenda I argue requires developing the means to identify transnational activities and actors that pose little or no risk to the United States so that limited regulatory enforcement and security resources can be targeted

to those which present a high risk. Such an approach places a premium on good intelligence and developing the capacity to practice what cyber security experts call anomaly detection.

Now, in the computer industry anomaly detection represents the most promising means for detecting hackers intent on stealing data or transmitting commuter viruses. The process involves monitoring the cascading flows of computer traffic with an eye toward discerning normal traffic. Once that baseline is established software is written to detect aberrant traffic. A good computer hacker will try to look as much as possible like a legitimate user, but because he is not legitimate he inevitably does something different. Good cyber security software will detect that variation and deny access. For those hackers who manage to get through, their breach is identified and shared so that abnormal behavior can be moved from the guidance of what is normal and acceptable.

Now, in much the same way the overwhelming majority of cross-border traffic that moves through the global networks to the United States and the global community on which they depend moves in predictable patterns and is the front line agencies like the Coast Guard and Customs and INS and Border Patrol that are there monitoring that day-to-day traffic and that have the relationships with the private sector players, who are legitimate players, who are part of those processes that ultimately are going to inform us about something's good, bad or indifferent.

Now, the key with stressing the importance of anomaly detection as a tool for identifying and intercepting criminal or terrorist activity highlights the fact that an important element of homeland security mission requires that these frontline agencies must have the means to do well that which they were traditionally tasked to do; that is, in pursuing their day-to-day work that they would develop the expertise, the relationships, and the process and possess the authority to stop and intercept that which they discover to be aberrant.

Coast Guard men and woman that are out on daily patrols to interdict drugs and illegal migrants, protect fisheries, advance safety among recreational boaters and monitor the movements of hazardous materials on ships or within ports, it is these folks who are going to have a physical presence and a requisite presence of mind and authority to pick up on other nefarious activities. Similarly, it's the Customs inspector who routinely examines the shipping manifest to ensure compliance with the U.S. revenue laws that is going to be best positioned to spot a shipment that makes no commercial sense, such as a very low cost commodity moving on a high cost conveyance.

Based on the above, getting homeland security right therefore requires three things, the first a paradigm shift that moves away from a gates, guards, and guns approach to security and toward a network risk management approach for mitigating the threats associated with catastrophic terrorism; second, that the capacity of the agencies who play the role of first detectors and first responders in these networks must be commensurate with the responsibilities they shoulder; and third and finally, that the work of these agencies must be supported by enhanced communication and coordination with the national security intelligence communities.

The obvious question this ambitious agenda raises is can it be accomplished without a major realignment of those agencies? I would suggest that the past and post-September 11th experience to date would answer, would suggest the answer is no.

In the end, organizing homeland security is really a subset of the broader challenge of how to work to ensure security is an organic part of global networks that, one, criminals and terrorists will increasingly target and exploit and, two, upon which the United States and the international community depends. The events of September 11th should have fatally undermined the prevalent myth of the 1990's that less is more in advancing globalization. Managing complex, concentrated, interdependent systems requires protocols and a means to ensure those protocols are being abided by. Done smartly, this can be accomplished.

The American people should be able to look forward to a two-for by combining many of the frontline law enforcement agencies into the Department of Homeland Security. One, they will get a more robust capability for detecting and intercepting terrorists before they arrive or carry out their attacks on American soil. Second, they also get more capable agents and agencies in combatting crime. Any effort to tradeoff the one for the other would only be self-defeating.

Thank you very much.

[The prepared statement of Mr. Flynn follows:]

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Statement of

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on

"The Potential Impact of Homeland Security Reorganization on Federal Law Enforcement Activities unrelated to Terrorism and Narcotics Interdiction."

presented before the

U.S. House of Representatives
Government Reform Committee
Subcommittee on Criminal Justice, Drug Policy and Human Resources
Room 2154, Rayburn House Office Building
Washington, D.C.

2:30 p.m.
Monday, June 17, 2002

Good afternoon, Mr. Chairman.

My name is Stephen Flynn. I am the Jeane J. Kirkpatrick Senior Fellow for National Security Studies at the Council on Foreign Relations where I am directing a multi-year project on "Safeguarding the Homeland: Rethinking the Role of Border Controls." I have also served as a consultant on the homeland security issue to the U.S. Commission on National Security (Hart-Rudman Commission) and to the Advisory Panel to Assess Domestic Response Capabilities for Terrorism Involving Weapons of Mass Destruction (Gilmore Commision). Just recently I retired as a Commander in the U.S. Coast Guard after 20 years of active duty service.

Throughout the 1990s while serving as a professor at the U.S. Coast Guard Academy, I have been studying many of the criminal challenges that have occupied the attention of this sub-committee. I have noted with concern three developments relevant to the subject of today's hearing with regard to organized crime. First, is the trend towards diversification. Criminal organizations rarely restrict their activities to a single "specialty" like narcotics trafficking, but are engage in other criminal conspiracies such as cargo theft, migrant smuggling, trade fraud, software piracy, and internet fraud. For instance, during a field visit to Southern Florida in June 1999, I learned from the Miami Dade-FBI Cargo Theft Task force that there was substantial Colombian involvement in the theft of high technology moving between the Free Trade Zone in northwestern Miami and the port of Miami. Around the same time, bootleg-software and illegal Asian migrants were arriving in the United States in containers in Los Angeles and Long Beach as a part of smuggling operations run by Chinese gangs. Nigerians criminals, who have a long-standing reputation as master con-artists, took to the internet to woo new victims into fraud schemes.

These examples also point to the second trend which gathered momentum in the 1990s which is the increasingly global scope of the activities of criminal organizations. More and more criminals operate as non-state actors who find borders essentially meaningless. In fact, the thugs find the requisites of sovereignty to be largely an ally in their global enterprises. Since sovereign governments reserve for themselves the right to draft laws, to establish rules and procedures for operating its criminal justice system, and to establish public policy priorities; law enforcement necessarily must be pursued against a backdrop of widely differing national jurisdictions. The inevitable lack of harmonization muddies the prospect for seamless international cooperation among enforcement authorities. The collapse of the Soviet Union ironically contributed to this challenge by adding more states to the community of nations—many of them with nascent or dysfunctional criminal justice systems. One result is that organized criminal networks are finding the world to be their oyster.

The third trend has been the closer linkages between organized crime and terrorists, guerrillas, and insurgency groups. The end of the Cold War ushered in the end of superpower benefactors who had often supported groups fighting what were effectively a form of proxy warfare between the Soviet Union and the United States.

With the falling of the wall, an important source of cash and weapons largely dried up, but the conflicts throughout the developing world did not. Antagonists on both sides had to find an alternative source to bankroll their cause and to arm their foot soldiers. Most found that crime paid, particularly if they could operate from the relative sanctuary of a failed or weak state. Somalia, Afghanistan and Colombia are prime exemplars of this unfortunate bit of post-Cold War fallout.

I point to these three developments—diversification, globalization, and the crime-terrorism-guerrilla nexus—to make a critical point relative to the subject of this hearing today: the challenges of terrorism and narcotics interdiction can not be isolated from the issue of organized crime more generally. The corollary that flows from this conclusion is that many of the enforcement activities that target crimes such as cargo theft, tax evasion, migrant smuggling, and internet fraud will reap important dividends in fighting narcotics smuggling and terrorist activities directed at the U.S. homeland.

Consider the case of U.S. seaports. According to the report of the U.S. Interagency Commission on Crime & Security in U.S. Seaports in 2000, among the "significant criminal activity" that takes place in the nation's major seaports are drug smuggling, stowaways, trade fraud, cargo theft, environmental crimes, export control violations, and the illegal export of currency and stolen vehicles. These crimes occur against a backdrop where seaports serve as the global on-ramps and off-ramps for the overwhelming majority of the imports and exports that move to and from North America. Thus, for would-be terrorists, seaports satisfy the age-old criteria of opportunity and motive. "Opportunity" flows from the volume and velocity of the people, goods, and conveyances that pass through them. As it currently stands, a would-be terrorist can expect favorable odds that enforcement authorities will be unable to detect and intercept a container or vessel carrying a deadly weapon, including a weapon of mass destruction. "Motive" is derived from the role that maritime transportation plays in the supply chains of many companies. This critical dependency translates into the tempting possibility that an attack involving the maritime transportation system could inflict serious harm throughout the U.S. economy.

In short, the absence of a robust capacity to filter the illicit from the licit in the face of: (a) a heightened terrorist threat environment, and (b) the growing volume of people and goods moving through international trade corridors, places U.S. and global commerce at substantial risk of disruption. But the complexity of the port security agenda highlights the difficulty of securing progress within the existing governmental framework:

(1) Seaports cannot be separated from the international transport system to which they belong. Ports are in essence nodes in a network where cargo is loaded on or unloaded from one mode—a ship—to or from other modes—trucks, trains, and, on occasion, planes. Therefore, seaport security must always be pursued against the context of transportation security. In other words, efforts to improve security within the port requires that parallel security efforts be undertaken in the rest of the transportation and logistics network. If security improvements are limited to the ports, the result will be to

generate the "balloon effect"; i.e., pushing illicit activities horizontally or vertically into the transportation and logistics systems where there is a reduced chance of detection or interdiction.

(2) Port security initiatives must be harmonized within a regional and international context. Unilateral efforts to tighten security within U.S. ports without commensurate efforts to improve security in the ports of our neighbors will lead shipping companies and importers to "port-shop"; i.e., to move their business to other market-entry points where their goods are cleared more quickly. Thus the result of unilateral, stepped-up security within U.S. ports could well be to erode the competitive position of important America ports while the locus of the security risk simply shifts outside of our reach to Canada, Mexico, or the Caribbean to ports such as Halifax, Montreal, Vancouver, and Freeport.

(3) Since U.S. ports are among America's most critical infrastructure, they should not be viewed as a primary line of defense in an effort to protect the U.S. homeland. The last place we should be looking to intercept a ship or container that has been co-opted by terrorists is in a busy, congested, and commercially vital seaport.

The complexity of the seaport security agenda also points to the need to temper aspirations for fail-safe security at home with a risk management approach. Risk management involves developing the means to identify transnational activities and actors that pose little or no risk to the United States so that limited regulatory, enforcement, and security resources can be targeted at those which present a high risk. Such an approach places a premium on good intelligence and developing a capacity to practice what cyber-security experts call "anomaly detection." In the computer industry, anomaly detection represents the most promising means for detecting hackers intent on stealing data or transmitting computer viruses. The process involves monitoring the cascading flows of computer traffic with an eye toward discerning normal traffic; i.e.; that which moves by way of the most technologically rational route. Once this baseline is established, software is written to detect aberrant traffic. A good computer hacker will try to look as much as possible like a legitimate user. But because he is not legitimate, he inevitably must do some things differently. Good cyber-security software will detect that variation and deny access. For those hackers who manage to get through, their breach is identified and shared so that this abnormal behavior can be removed from the guidance of what is normal and acceptable.

In much the same way, the overwhelming majority of the cross-border traffic that moves through the global networks upon the United States and the global community depends—move in predictable patterns. If regulators and enforcement authorities whose daily tasks place them in contact with those networks are given access to intelligence about real or suspected threats and are provided the means to gather, share, and mine data that provide a comprehensive picture of "normal" traffic to enhance their odds of detecting threats when they materialize. Even in the absence of specific intelligence, front-line agents can still often detect abnormal behavior because of their intimate understanding of the environment in which they operate, and the relationships they have with legitimate players who operate in that milieu. This is what happens when a Coast Guard boarding officer is tipped off by a mariner about a

fishing vessel that appears to be operating erratically, and when he stops and inspects that vessel, he discovers that it has the wrong kind of gear for the fishery in which the captain claims he is working. The officer then conducts an exhaustive search and locates contraband within a carefully disguised compartment on that vessel.

Stressing the importance of anomaly detection as a tool for identifying and intercepting criminal or terrorist activity highlights the fact that an important element of the homeland security mission requires that front-lines agencies must have the means to do well what they have been traditionally tasked to do. That is, it is in pursuing their day-to-day work that they will develop the expertise, the relationships, and possess the authority to stop and intercept that which they discover to be aberrant. Coast Guard men and women who are out on daily patrols to interdict drugs and illegal migrants, to protect fisheries, to advance safety among recreational boaters, and monitoring the movements of hazardous materials on ships and within ports who are going to have the physical presence and the requisite presence of mind and authority to pick out more nefarious activities. Similarly, it is the Customs inspector who routinely examines a shipping manifest to insure compliance with U.S. revenue laws that is best positioned to spot a shipment that makes no commercial sense, such as a very low-cost commodity moving on a high-cost conveyance. For the Animal and Plant Health Inspection Service, the skills it takes to prevent agricultural products that could contain natural blights or diseases from entering the country, equips them to spot acts of terrorism involving the global food supply.

Based on the above, getting homeland security right requires three things. First, a paradigm shift that moves away from a "gates, guards, and guns" approach to security and towards a network/risk-management approach for mitigating the threats associated with catastrophic terrorism. Second, that the capacity of the agencies who play the role of first-detectors and first-responders in these networks must be commensurate with the responsibilities they shoulder. Third, that the work of these agencies must be supported by enhanced communication and coordination with the national security and intelligence communities. The obvious question this ambitious agenda raises is: can this be accomplished without a major realignment of those agencies? The past and post-September 11 experience to date would suggest that the answer is no.

We must be candid in recognizing that front-line regulatory and enforcement agencies whose roles are most critical to advancing this expanded homeland security agenda have been neglected for years. Further, this neglect has not been benign. Their parent departments, Congressional appropriators, and OMB reviewers have historically treated them as orphans. Placed in an environment where the inevitable decisions about resource trade-offs are made by overseers with a non-enforcement and non-security focus, we should not be surprised that these agencies are so poorly positioned to get from where we are to where we need to be. Against this backdrop and in light of the fact that the catastrophic terrorism promises to be a long-term challenge versus a near-term crisis, the President has appropriately proposed major reorganization.

In the end, organizing for homeland security is really a subset of the broader challenge of how to we work to ensure that security is an organic part of the global

networks: (1) that criminals and terrorists will increasingly target or exploit, and (2) upon which the United States and the international community depends. The events of September 11 should have fatally undermined the prevalent myth of the 1990s that "less is more" in advancing globalization. Managing complex, concentrated, and interdependent systems require protocols and the means to ensure those protocols are being abided by. Done smartly, this can be accomplished—must be accomplished—by robust partnerships between the private and public sector and be greater levels of international cooperation. This cannot be done in a leadership or organizational vacuum. Further, if we avoid doing the heavy lifting now, in the aftermath of future terrorists attacks, we will have to tackle these issues with the inevitably diminished government legitimacy that goes with being judged as having done too little, too late to provide the core function of government—assuring the safety and security of its people.

In short, the American people can look forward to a "two-for" by combining many of the front-line law enforcement agencies into a new Department of Homeland Security. One, they will get a more robust capability for detecting and intercepting terrorists before they arrive or carry out their attacks on American soil. Second, they will get more capable agents and agencies in combating crime. Any effort to trade off the one for the other would only be self-defeating.

Thank you.

BIOGRAPHICAL SKETCH OF DR. STEPHEN E. FLYNN

Stephen Flynn has been a Senior Fellow with the National Security Studies Program at the Council on Foreign Relations, headquartered in New York City, since June 1999. On March 15, 2002, he was appointed as the inaugural occupant of the Jeane J. Kirkpatrick Chair. Currently at the Council, Dr. Flynn is directing a multi-year project on "Protecting the Homeland: Rethinking the Role of Border Controls." He is author of several book chapters and articles on homeland security, border control, transportation security, and the illicit drug trade. His recent publications include, "America the Vulnerable," in *Foreign Affairs* (Jan/Feb 2002), "The Unguarded Homeland" in *How Did This Happen? Terrorism and the New War*, PublicAffairs Books (Nov 2001); and "Beyond Border Control." *Foreign Affairs* (Nov/Dec 2000).

In January 2002, Dr. Flynn was appointed to the National Academy of Sciences Panel on Science and Technology for Countering Terrorism in Transportation and Distribution Systems. He has served in the White House Military Office during the George H.W. Bush administration and as a director for Global Issues on the National Security Council staff during the Clinton administration. From August 2000 to February 2001, he served as a consultant on the homeland security issue to the U.S. Commission on National Security (Hart-Rudman Commission). He was a Guest Scholar in the Foreign Policy Studies Program at the Brookings Institution from 1991-92, and in 1993-94 he was an Annenberg Scholar-in-Residence at the University of Pennsylvania.

A 1982 graduate of the U.S. Coast Guard Academy, Dr. Flynn served in the Coast Guard on active duty for 20 years, retiring at the rank of Commander. He received the M.A.L.D. and Ph.D. degrees in International Politics from the Fletcher School of Law and Diplomacy, Tufts University, in 1990 and 1991. He has received academic prizes for his undergraduate and graduate studies. In 1991 he became the first Coast Guard officer to be selected as a Council on Foreign Relations' International Affairs Fellow.

Dr. Flynn has lectured around the United States and abroad on the homeland security, border control, drugs and crime issue, has provided testimony on Capitol Hill and before the Canadian House of Commons, and has appeared as a guest commentator on Nightline, the Charlie Rose show, 60 Minutes, CNN, National Public Radio, and BBC Radio.

During his Coast Guard seagoing career, he had two tours as commanding officer of the Coast Guard Cutters REDWOOD and POINT ARENA, and one tour as operations officer of the Coast Guard Cutter SPAR. His professional awards include the Legion of Merit, Meritorious Service Medal, the Coast Guard Commendation Medal and the Coast Guard Achievement Medal. In 1999, he received the Coast Guard Academy's Distinguished Alumni Achievement award.

Mr. SOUDER. Thank you. Before moving to questions, I yield to Congressman Cummings, if you would like to do an opening statement.

Mr. CUMMINGS. Thank you very much, Mr. Chairman.

In the 9-months that have passed since the tragic attacks of September 11th, a great number of our government agencies have shifted their priorities and resources to better position themselves to fight the war on terrorism. Many of them, including those tasked with border security, domestic law enforcement, and drug interdiction, fall within the oversight and jurisdiction of this subcommittee. Among them are border agencies such as Customs Service, the Border Patrol, the Immigration and Naturalization Service, and the Coast Guard may be said to serve on the front lines as they regulate the flow of people and materials into the United States.

The President's proposal to create a Department of Homeland Security, like the Lieberman/Thornberry legislation, as the basis for this direct proposal, would merge the border agencies and many others into a single cabinet level department. The reorganization of these agencies will entail substantial adjustments in addition to those made within each agency to date. The reorganization will have further ramifications for the agencies not included in the proposed department, most notably, the FBI and the CIA.

Already, the FBI is undergoing a major restructuring plan, as a result of the of which 518 agents have been transferred to counterterrorism activities, 400 of them from drug investigations.

Similarly, the Customs service has moved counterterrorism to the top of its mission and priority list. For the Coast Guard, post-security has supplanted search and rescue and drug interdiction operations as its top mission priority. Also, reflecting a shift in priorities toward anti-terrorism, the Border Patrol has shifted substantial resources away from the U.S./Mexico border to the even more vast northern border. And the Drug Enforcement Administration has contributed hundreds of agents to the Sky Marshals program, even as intelligence reports suggested warring roles for a drug trafficking in the financing of terrorist groups and activities.

Over the past several months, this subcommittee has held a number of hearings to assess the impact of the heightened security focus on these agencies and their nonterrorism-related functions. These include a series of field hearings at border crossings and sea points around the country. According to some testimony the subcommittee has received, the heightened focus on terrorism may actually be helping efforts to discover illegal drugs and other contraband, since that focus calls for heightened security scrutiny of persons and materials entering the country generally. But whether the cumulative effect of the resource shifting will continue to be positive for the U.S. counternarcotics efforts and whether other nonterrorism-related functions will similarly benefit is far from clear, and hardly a foregone conclusion.

What should be clear is that the war on terrorism must be waged in a way that does not compromise other vital missions that homeland security agencies carry out. Ensuring this result will require careful evaluation and planning, and this subcommittee and others of the Government Reform Committee have an important role to

play in exercising our jurisdiction over the proposal to create a Department of Homeland Security.

First among our objectives should be ensuring that the new department actually streamlines communication and cooperation between and among the new department's diverse components as well as the department and other Federal, State, and local agencies. The importance of efficient intelligence gathering and information sharing to the homeland security mission has led some to suggest that the FBI and CIA should also be merged into the new department. At the same time, the FBI's law enforcement function has been cited as a reason why the agency should be kept separate, even though numerous other agencies with domestic law enforcement responsibilities are included in the Bush and Lieberman/Thornberry proposals.

So, there is much for us to sift through and to sort out, and we are fortunate to have a panel of witnesses before us who possess a wealth of wisdom and experience as former high ranking agency officials and experts in the areas of homeland security. I welcome them. I find their—already, their testimony to be quite interesting, and I look forward to the questioning phase of our hearing.

Again, Mr. Chairman, I want to thank you for holding this hearing. I think it is quite timely, and certainly quite appropriate.

Mr. SOUDER. Congresswoman Schakowsky, would you like to make any opening statement?

Ms. SCHAKOWSKY. Thank you, Mr. Chairman, for convening this hearing today to examine the possible impact of the creation of a new Department of Homeland Security. The effect that it will have on our Federal law enforcement and drug interdiction efforts.

Since President Bush's June 6th announcement of a proposal to create a new Department of Homeland Security, numerous questions have been raised by Members of Congress and the American public and the media. One question that is worthy of considerable discussion—and we have had some today, and I appreciate your input—is the impact the creation of this new agency will have on critical nonhomeland-security functions of the agencies the President has proposed for inclusion in the new department.

For example, among the many duties of the U.S. Coast Guard is performing search and rescue operations and facilitating travel for commercial vessels; the Immigration and Naturalization Service provides numerous fee base services for legal immigrants; other agencies that may be folded into the new department are tasked with interdicting illegal drugs and collecting tariffs. Some have raised concerns that these critical services may not receive the attention they deserve from a cabinet secretary whose primary charge is to protect the homeland. Moreover, some have questioned the wisdom of placing multiple and possibly competing missions within the same department.

Another issue worthy of considerable discussion again raised earlier is the administration's decision not to include the CIA or FBI in the new department. Some have asked how this new agency would have prevented the kind of intelligence and communications failures that led up to the September 11th attacks. It is not altogether clear whether creation of a new Department of Homeland Security will guarantee that crucial intelligence and analysis would

make it to those who most need to be familiar with it, or whether the new agency will simply add another layer to the top of an already dense bureaucracy. A fundamental question each of us has and will continue to ask ourselves and the proponents of the new department is: Will it make us safer?

To answer that question, we must first take the necessary steps to identify just what went wrong, and how similar failures of our system can be prevented in the future. Then we must make a determination as to whether this new proposal addresses the problems.

I am not convinced that our first priority ought not to be addressing those clear failures that led up to September 11th before we address what may be longer-term problems. I am also concerned about what impact the transition process alone would have on existing security and non-security operations of our various agencies and their employees, and hope to get to some of those answers through our question-and-answer period. So, I thank you, Mr. Chairman.

Mr. SOUDER. Thank you. One is, is that what I would like to say first off, is that hopefully you will each be available to our staff and us in the next 14 days. I am not saying this is on a railroad track; railroads don't move this fast.

It looks like for a number of reasons this full committee is starting this week and will be moving prior to break. It is clearly in an election year. If we don't move this through the House before the August recess—which will be an extraordinary pace, given the multiple jurisdictional and possible select committee oversight, it is going to be very difficult to get this conferenced before the end of the session. The goal, obviously, would be to try to have this done before the election; if not, then in a special session after the election. And you can realize that when you are dealing with this many committees and two bodies, the first steps are coming really fast. So, we need relatively rapid answers.

It is also clear that we are going to be doing oversight over this for the rest of our careers, because whenever you move fast, it means you are going to make some mistakes. The truth is, however, if we don't move fast, the bureaucratic inertia may take over here, and we will lose the ability to move. So, this is a very difficult tradeoff, but it does mean we have a lot of pressure on us in the next 2 weeks that the hearings that we had in the—in Congressman Shays' and Weldon's committee last week on the Thornberry and Lieberman bills were the—kind of the start of our oversight. And it is also clear that everybody is tippy-toeing around certain of the things, and part of the reason we brought you in here today is to try to see if we can reconcile or treat head-on some of these questions. And I appreciate your frankness, and I am going to start to move into some of these questions right away.

And I will like to move through one assumption that Dr. Flynn—and I want to understand what you had in your testimony. You said that—because clearly I like the way you said catastrophic terrorism. In other words, that's what's really the change here. And the question is, is how much emphasis are we going to put on catastrophic terrorism versus kind of the day-to-day terrorism. And, in fact, at this point the numbers don't equate.

In other words, the risk to our economy, the risks on narcotics, the risks on child trafficking is far greater than the catastrophic terrorism. How would you factor that in to the psychological battle that we are in right now? Because, really, the tradeoffs we are talking about is, how many resources are going to catastrophic versus the day-to-day challenges?

Mr. FLYNN. Well, I think if we are talking about the prevention of catastrophic terrorism acts, then the point that I guess—you know, if I could distill my testimony to a single sentence, is you cannot do kind counterterrorism, you cannot do homeland security without basically dealing with a broad range of crime that has bedeviled us for quite some time. They are completely intertwined. And so the opportunity there is that by doing well the traditional crime problems, you are, in fact, enhancing your capacity to deal with terrorism. You know, terrorism isn't an enemy; it's a form of warfare. The form of warfare is, how do I basically take on an adversary that has complete dominance in the conventional military realm. I have to try to blend in to the real estate to get at it and look for the soft underbelly. That's precisely what criminals have been doing for a long, long time.

And I guess the second piece of that is that one part—the goal—there is military value in engaging in catastrophic terrorism. It is not just killing Americans in large numbers and toppling landmarks; it is getting the subsequent disruption, the economic disruption, and the societal disruption that flows from the event. We did to ourselves more were harm on a power basis than what the terrorists did to us on September 11th by closing all our seaports, closing our borders, effectively, and grounding all our aviation. We essentially imposed a blockade on our economy as the only tool we had to manage the risk associated with that event. That's because the agencies, the former heads of which are represented here—the only tool they had in the tool bag in this crazy world we are in here is to turn off the world to make it more secure.

So, enhancing their capacity to do their job both helps on the detection ideally of bad people doing bad things initially, but it also helps us to deal with the postmortem, to turn the system back on again, and therefore start to chip away at the military value of doing these kinds of horrific acts. Again, it's a two-fer you get. But, if you try to isolate these things, it is self-defeating for homeland security, and it sure as heck will be self-defeating for these other vital interests.

Mr. SOUDER. What was your reaction to, I think it was Mr. Nunez's statement that, to have an agency that focused on anti-terrorism, and not have the FBI, who has been designated as to be the focus on anti-terrorism, not in that agency? How do you reconcile that?

Mr. FLYNN. Well, it is clear that intelligence is a very key part in being able to identify what limited resources should target; and the FBI has some command on that intelligence on domestic ground. But it also is that much of the intelligence comes through some of the things that Mr. Banks laid out here: It's the day-to-day monitoring of commercial data. If the Customs agent says, what are we doing importing cement posts from Colombia when there are cheap and affordable cement here in the United States,

that leads you into drugs or could lead you into a weapon of mass destruction.

So, part of, though, the focus, I think, of the rationale was in the Hart-Rudman Commission on this issue, was that ultimately they would—at least a stepping point, a stepping-off point is if we can bring together, hobble together what I call the meeters and greeters of people, conveyances, and cargo, the folks who are most likely to become the first permanent cross to say, who are you and why are you here, the authority to basically examine them and make sure they are tethered back to the national security apparatus. Those agencies right now are orphans of their parent departments. They have not been well served by their committee oversight in general on the Hill, and they sure as heck have not been well served by the Office of Management and Budget.

So, we are talking about, potentially at least, an advocate for their core functions that, if the synergy is there, can provide us homeland security. It's the strip-away elements of it to do the gates, guards, and guns, then it's just foolery.

Mr. SOUDER. So I understand—let me, before I yield to Mr. Cummings—you are really arguing that the idea of leaving the FBI out was, is this is supposed to be the Department of Border Security.

Mr. FLYNN. Clearly, what the President put up front was that was one of the four elements, was to bring together the border and to bring rationale to them. That makes a good deal of sense to me. He also puts emphasis obviously on intelligence within that, that keeps the FBI and CIA out.

Now, some of the—I'm of mixed views on it, but I think overall there is a lot of intelligence that's collected from open sources, from regulatory data and so forth that right now nobody can connect, and bringing it together and fusing it would give us a great deal of what I was trying to say in my testimony, anomaly detection to say, wait, this isn't right. We need to examine that.

We also need a way to funnel in the intel. I mean, the challenge is that homeland security become all the U.S. Government at some stage. So the FBI, should it be in there? I think the same rationale is true, that many things are done for counter-crime and law enforcement and the intelligence goes with it, it's good for homeland security. It can fit within the construct, but there also is some rationale for bringing—for just the existing proposals of—because these really do represent the meeters and greeters for people conveyances, and cargo. They are, at least, being put under one roof.

Mr. SOUDER. That's a step in the right direction basically needed.

Mr. FLYNN. I mean——

Mr. SOUDER. In other words, that could include an airport, it could include a port. But, basically, you are talking about some sort of crossing into an American zone. That's what you mean by meeters and greeters?

Mr. FLYNN. That's right. Border patrol, INS for people, Customs and agriculture for goods, and for Coast Guard for conveyances, and TSA for airplanes and the rest of the conveyances as well.

Mr. SOUDER. Mr. Cummings.

Mr. CUMMINGS. Mr. Flynn, again, I have got to ask you this. As I was listening to you, I was just trying to—you know, one of the

things that you learn from being in government is that you can set policy but you still have got to deal with people. And I was just wondering, as you see it, if you were to bring all the agencies together, do you—you think it would be very difficult to get the kind of cooperation that's necessary to make it work? And, what kind of safeguards would you put in to make sure it does work?

Do you follow what I'm saying? If people are used to doing things independently—I mean, I just look at some things that happen in—like in neighborhoods, in small areas, where people have their own turfs, and then just the whole idea of sharing just doesn't fit into what they have been doing all their lives—all their careers, rather. And I was just wondering, you know, how do you—how do you make sure—and I believe it can work; I'm just wondering, how you make sure that you get maximum cooperation for all the things that you talked about, communication and etc?

Mr. FLYNN. Well, I guess as a starting point, I would say I'm not sure how things would be more dysfunctional than they are right now with regard to, you know, these agencies cooperating and coordinating, precisely because they have to answer to so many different parents, whether it's the committee oversight that security is not their priority or many of their other missions, or whether the departments who have largely been, say, not only kind and gentle to them as they have gone about and done their business.

Could the system we have right now created a gaping hole for the people to do what they did on September 11th; and I argue we are in a more dangerous time post-September 11th than there because of the example of that. They made it look easy, and they also demonstrated the profound disruption we will do to ourselves when faced with these catastrophic events.

So need—if this were a crisis that were going to go away in another year, then I would say reorganization would be a fool's game. But we are talking about essentially, as I argue, a warfare we'll be conducting in the 21st century. Reorganization is going to be a part of that. People will be—people will be conservative. They'll be difficult. But part of the challenge is getting them to see that they are all pulling together toward the same end, which is providing the safety and security for the American people while still allowing us to connect and engage to that broader world out there.

I think with somebody who is a first-year cabinet secretary advocating for them, and—that the prospects for that coordination are going to improve. But there's going to be some omelet-making. There's no question about that.

Mr. CUMMINGS. Now, we've heard several opinions as to some people say we need to—I think the President sees it as a very urgent matter, and I think a lot of people do. Others say well, let's—and it's been said here today, let's go slow and go careful. Do you think the folks who did their analysis for, say, the September 11th attack, when they see what has happened post September 11th—I mean, when you take all of that into consideration, do you see that—this to be a very urgent thing, or do you think in their eyes it's something that they would want to take advantage of before we got this together?

Mr. FLYNN. I think it's absolutely urgent that the U.S. Government come to grips with the profound challenges that homeland se-

curity present us, and that includes reorganization; one, because another event will happen. But, second, it will happen, and the American people are going to be much less forgiving of the government's inability to protect itself from it, and that will challenge the core legitimacy of the government. If it looks in the postmortem that we are still doing like we are right now, chatting in Long Beach and L.A., where 44 percent of all the containers headed to the country come into, where we are chatting about who is going to pay the sentry to check an ID card and that's the state of homeland security 9 months into this, then I think the people are going to want to throw out the whole thing and start anew.

So I think there is a real urgency because of the threat, but real urgency as well, because this is an issue of government legitimacy. Can we organize ourselves to deal with a new threat? We have a national security establishment that was built for an away game, to basically solve security problems water's edge out. The bad guys have changed the playbook; they have come here, and will continue to come here, and we have got to look at how we can organize ourselves to confront this new warfare.

Mr. CUMMINGS. When we heard a few weeks ago Vice President Cheney say that further attacks were inevitable and that there was not a whole lot we could do about it, do you think that statement would be much different if we were—we had this Office of Homeland Security—and I'm not trying to get you to speak for him; I'm just asking you your opinion.

Mr. FLYNN. Sure.

Mr. CUMMINGS. If it were intact and it was working and the coordination going on, I mean, do you—you see attacks, you just said that, coming in the future. Do you think we increase our ability to counter them through this effort? And, if so, to what degree, assuming we had it up and running at the max.

Mr. FLYNN. I think the heart of the issue is that, how much security is enough? That's what we are really wrestling with here and how much—how we organize ourselves to provide that security. I think the key is this threshold: That inevitably we will have incidents. This is—Americans were not perfectly secure prior to September 11th; they are not going to be perfectly secure post-September 11th. We will have incidents. The key is how to respond after that incident. If the conclusion is this was a result of a correctable breach in security versus the conclusion being the absence of security, then the Americans—the response by American people is much different.

If the assumption is this was the result of a correctable breach in security, you'll do the analysis to fix the breach and get on with life. If the view is the absence of security, you'll shut the thing down and insist on—basically, you start anew. And that's where the terrorists' goal is in this and the military value, is get that profound disruption.

So our objective I think is getting sufficient capability that, one, we can actually do a postmortem when an event happens, but second, demonstrate we have the capacity to repair breaches to security. And I think the organization that the President proposes gets us further down that pike. I worry very much that if an event happens very soon with the current infrastructure and we do the post-

mortem, then the American people are just going to be enraged at what they see.

Mr. CUMMINGS. Thank you very much.

Mr. SOUDER. Congresswoman Schakowsky.

Ms. SCHAKOWSKY. Thank you, Mr. Chairman.

Mr. Flynn mentioned how—the importance of meeters and greeters being part of this whole security apparatus, but I'm concerned that meeters and greeters—particularly, I'm looking at the Immigration and Naturalization Service. I have a district that is rich with immigrants from all over the globe. It is kind of a gateway to the United States, the north side of Chicago and some of the suburban areas there. And about 80 percent of the calls that come to my office deal with basically inefficiencies of the INS, dealing with the service aspects of it.

And I am concerned that the overall message of including immigration functions such as deciding asylum cases or handling unaccompanied minors or processing citizenship, etc., becomes lost in an agency that has a new focus, and in the meantime, we have done a whole bunch of work that this House created actually eliminated the INS, put it in the Justice Department, separated the two functions; and now it looks like we are scrapping that idea and putting it into this new homeland security.

I am concerned about these essentially non-security functions. The people who call me already are made to feel lots of times like criminals or terrorists when they are here legally and trying to get through the system and become citizens. So, I am concerned about this merging, and would like Mr.—is it Kruhm?—to respond to that.

Mr. KRUHM. I think the issue for INS is dealing with the numbers. At a minimum, every year they touch in some way, form or manner over 500 million people. It is just an incredible job. What people don't understand is when we extend a benefit to a whole new group of people, in a lot of cases people who have gotten here by either fraud coming through the ports of entry, or, more likely, by getting here illegally. We extend a benefit to those people, and they eventually get a legal status in this country; then they can apply for benefits for family members. And it's like reading the Book of Exodus out of the Bible.

Ms. SCHAKOWSKY. That's my whole problem with it. There are lots of people here who are here perfectly legally and who are finding that the INS can't handle—it takes 4 years to get an answer and to get a date for their swearing in ceremony, etc.

And it's precisely that sort of attitude that views many of these legal immigrants who come here for a better life. And that's what America is about, and that presumably is what we are fighting for here. I am concerned that function gets lost. I understand what you are saying; there are people who come here illegally; we need to address that issue. But I am talking about the service function of the INS now being in an agency that directs itself to security and law enforcement, etc.

Mr. KRUHM. Just, if I may respond very quickly. When INS sets its priorities and parameters and its workload for the future, it's based on X number of cases to deal with. And when the—when an unknown additional group gets thrown on them, the resources don't

flow with that or flow as quickly. And so it immediately creates backlogs, and these backlogs fester and continue on and on. We need a legal system of immigration. We need that rich heritage to remain with this country. But the adverse impact of illegal immigration or illegal migration is enormous. It creates a whole new culture in vast areas of our borders, and this whole new culture is exacerbating. It's adding to the load of INS, and on a daily, minute-by-minute basis, they get further and further behind. And, in my opinion, our government needs to address this issue. It needs to set what legal immigration is and allow that to happen, and no one else gets legal status, no matter how they get here.

In addition to that, INS, even if they do arrest somebody and run them into the deportation process and a final order of deportation is issued, nothing happens. There are—and I don't have the exact figure, but I know somewhere between 350- and 375,000 final orders of deportation to remove people from the United States, and no one is going after them. It just compounds itself. It's one on top of another on top of another. And when you have these things occurring, and then—pardon me—but if Congress or the administration extends a benefit, gives authorized employment or gives an amnesty program, then the people waiting, then the host countries or the source countries see a reason why they should also try the illegal system because the end result is the same. And if you look at what is occurring on the border—and in my prepared text I talk about criminal enterprise zones. You have kids who are going to civics class in high school in the daytime and smuggling at night. And they start off with smuggling migrants; they graduate to smuggling drugs, and they will smuggle anything for money. And this whole issue of illegal migration needs to be addressed because it just is so intertwined.

Ms. SCHAKOWSKY. Let me just say, your answer is compounding my concern about this. The President of the United States believes that those two functions should be separated, service and the law enforcement aspect. I think it needs to, in order to serve well the many immigrants who legally come to embrace this country for what it is. Thank you.

Mr. SOUDER. Thank you. If it is OK with the other Members, what I think I will do is go to 10 minutes to the next round; so, if you want to get into a question, we can go a little longer. I have got a series of things.

One is that, I want to ask you this general question, and then I'm going to immediately move to another one. But, if you could get back to us—with any suggestions you have on this—by Friday. If there are parts in the homeland—let me first say. What's unusual about the Government Reform Committee and the way this is going to be referred in oversight is that we have cross-jurisdictional concerns. Every other subcommittee can only deal with the things inside their committee; so, Judiciary will deal with judiciary; Agriculture will deal with agriculture, Energy and Commerce will deal with energy and commerce. But we can offer amendments to the full bill that have to do with anything when it comes to this committee.

So, if there are parts in this homeland security bill that you think we ought to debate taking out or things that we ought to de-

bate putting in, would you clarify that for me? I am interested and I presume other Members would be interested, based on your experience.

Now, let me give you one example. And I will continue with Mr. Kruhm. Are we saying your name correctly?

Mr. KRUHM. Yes, sir.

Mr. SOUDER. Is that pronounced right?

One of the things that every Member of Congress deals with is with our embassies, because on legal immigration questions, we deal with the embassy, even if we started dealing with the INS in a regional office. In my case, it might be the Omaha office that my staff person deals with. Why, if we are trying to get control over tracking terrorists and/or other illegals who are dealing with criminal trafficking, wouldn't that first desk clearance be included under this agency?

Mr. KRUHM. The immigration process requires a visa to come in the United States. And there is a very important role by the U.S. State Department. So, it's for—in order for a person to come here legally, they go through a review process—it's a marriage of both justice and State—and obtaining the visa. They bring the visa with them when they come to the port of entry, and then they are processed by the Immigration and Naturalization Service. So—and when you are looking at Homeland Security, you know, I looked at the proposal and they said this agency is in, this agency is out.

When you look at all of government that has—that touches homeland security in some way—as I was talking to one of the other panel members before we came in, our Federal prison systems are going to have to be an incredible source of intelligence. Where do they fit in this process? Who brings them in? Who consults with them? Who ensures that flow of intelligence comes in to where it has to go and is processed and acted on if necessary? So, it is an incredible task, but—and what we need to do is be concerned whether we create a large ponderous organization, or one that is very agile.

Mr. SOUDER. I want to get back to this, because it is an example of a specific thing that I don't understand. I understand that we have a huge intelligence question here. In other words, we have attempted to put some of the agencies together, but we have actually left out the biggest part of intelligence; and, intelligence is critical when you are with the Customs agents or INS or Border Patrol agent at an airport or wherever you are at. If you don't have the intelligence, the whole system breaks down. But we are going to apparently have not all that consolidated. But what I don't understand is if you are checking, as I understand, at the border someone who is coming through, the first step is, do they have a visa? Right?

Mr. KRUHM. They have to have a visa in order to come into the country as an immigrant or as a visitor. Now, there are some countries that——

Mr. SOUDER. Then why wouldn't that be in this department?

Mr. KRUHM. You are going to have to ask someone over at the White House.

Mr. SOUDER. Do you have—Dr. Flynn.

Mr. FLYNN. Yes. I am strongly of the view that Consulate Affairs should be included in this precisely because of that role. You know, the average consulate official is spending under a minute reviewing an application, and then here we face mounds of time and expense trying to sort things out after the fact. It is the orphan of the State Department, which is the orphan of the National Security Establishment. So, it is not a—particularly robust capability. It needs to be. And that would be one player that I see as a glaring omission that should be included in this.

Mr. SOUDER. I mean, and all of us have visited embassies and we appreciate how hard the people are working through. I mean, they are lined up early in the morning, they stand there at the embassy; it's often the junior people at the embassy that are standing there trying to sort out whether the different people have legitimate forms or not. And we also—we are not going to resolve in this bill this legal/illegal question, but we need to do that, because I think almost all Members of Congress have this frustration that we get involved trying to argue whether somebody can come over and visit for a wedding when we have millions of people coming in illegally.

And it's almost like the INS's position is: Since we can't do anything about this over here, we are going to really come down hard on here because it's a real person we can actually talk to, because we can't figure out how to deal with the other. And then politically and economically in this country, clearly we are going to continue to be inconsistent on our—if we—how we sort through those deportations is going to be a long-term challenge, because if we deported everybody we would collapse our economy; on the other hand, by not doing it, we are encouraging more people to come. We are going to need—the President started to address that; September 11th set us back. I think you have raised some questions today that long-term we have to deal with.

I want to raise in another line here with Mr. Marshall, if I can. The FBI has announced that basically they are pulling out of drug enforcement; that goes over to DEA now. What precisely does that mean for DEA? What was FBI doing that DEA wasn't doing? Presumably, I would hope, not a lot of overlap, but I presume there was some overlap. What would be some differences? It looked to me like giving them multiple tasks that we had already given the FBI, and they were drowning from everything from S& Ls to, as was alluded to here, to other types of things.

We already had the FBI pretty well loaded up, and they seemed to be, as you boosted the number at DEA regional offices and task forces, letting DEA—for example, in Indiana, DEA took over the lead in the task forces, which, a few years ago, everybody would have been scrambling to be the head of a task force; and, that the FBI might have had some of this occurring already.

Could you give us a concrete example of how you see this playing through? Does this mean more DEA agents in the United States as opposed to overseas a disproportionate amount of requests in that area? Intelligence? Is it that you kicked over in some cases, if it became a larger systemwide thing, you worked at busting and bringing them down, and then the FBI tried to bring the networking together, which was part of the theory of organized crime?

How do you see this, and what do we need to be looking at for what is DEA going to need to pick up the FBI functions?

Mr. MARSHALL. Well, let me start out by saying that the theoretical concept and framework for drug enforcement in our country was, and still is, the Presidential Reorganization Plan Number Two, which created DEA, and made DEA the lead single mission agency in the area of drug enforcement. Now, over the years, we came to see very clearly that there are many other types of crime, and now terrorism, that relate in some lesser or greater fashion to drug trafficking.

In the particular arena of the FBI, they were dealing with crimes of all sorts, organized crime, many other types of crime. And basically you look at a reality—the reality of a situation is that crime breeds crime; and, where you find one type of crime, you often find some other type of crime.

So, I think the difference between the DEA and the FBI and many of the other agencies that are in the drug arena is that the DEA has the single focus and the lead role in drug enforcement. I think that you look at the other agencies as having a primary mission with the mission of drugs as probably an ancillary thing that they focus on in the context of pursuing their other primary missions.

Now, in reality, there was a great deal of cooperation, continues to be a great deal of cooperation between DEA and the FBI and a lot of other agencies as well, for that matter.

But I think as this thing plays out, Mr. Chairman, what we need to ensure is that we have a framework—and a good model would be that Reorganization Plan No. Two—we have a framework which allows for DEA to continue in its role and even enhance its role, I would say, as the lead anti-drug agency.

I would also comment that as we look to the FBI diminishing their role in drug enforcement, if the same thing could happen in Customs or the Coast Guard and many of the over agencies that are involved in some way in drug enforcement, as those resources may diminish to go after more and more of the homeland security mission, I believe that those resources should have a corresponding issue within DEA. And, if the issue is organized crime, there should be a corresponding increase there; if the increase is weapons, there should be a corresponding increase there. Because all of the crime and drugs and violence and terrorism are so intricately intertwined that if you don't focus on a total law enforcement picture and fight a total law enforcement struggle against crime in general, then you are not going to be able to make too much impact on the terrorism issue as well.

Mr. SOUDER. Mr. Cummings.

Mr. CUMMINGS. I just want to followup on that. I want to just bring it to a local level so I can set the framework for a question, Mr. Marshall.

In Baltimore, what we saw right around September 11th is that there was a lot of emphasis placed on security, trying to guard outports. You know, we were just kind of up in the air. Nobody knew what to do, really. And what we also saw is, in a short period of time, our murder rates skyrocketed in a short period of time right around that time. And I guess, you know, when I look at—

I think all of us agree, we have got to do something about terrorism, we have got to deal with this. And I think the entire Congress feels very strongly about that.

But at the same time, as you kind of—I think all of you have heard from us in our questions, in our statements, one of the fears is that while we are fighting terrorism—which we must do—how do we make sure that the domestic front, which we are supposedly protecting—and this is what I hear from my constituents, they want to fight terrorism. But they keep hearing this stuff like what the chairman just asked you about. And they have got drugs deep into their neighborhoods. And they'll say, yeah, we are really concerned about folks flying planes into buildings, but at the same time we are fighting—in their words—terror every day, where people, young people are being shot down and drugs destroying their neighborhoods.

So they see this every day. They see New York—and they consider it very serious, but they see New York as something that happened; it was very catastrophic. They feel bad about it. But then they say, right here where we live, we deal with it every day destroying our children.

And so I guess what I'm trying to go to, Mr. Marshall, is when we move those—we start putting that emphasis on terrorism. And some of you all—others may want to help me with this one.

But let's say bringing all of this stuff under this homeland security department. Do we—do we, in fact, minimize the possibility or probability that we don't truly cover the domestic piece the way we have been? And, if that is so, then how do we, in structuring this office, do we make sure? And it may have to be an individual—you know, each one of you, the places that you represented, may be an individual agency kind of thing. But how do we make sure that doesn't happen? Because I'm telling you, I think a lot of the American people are really struggling with this whole thing, because they worry about their day-to-day situation, but they are also worried about terrorism.

So, why don't you take a stab at that.

Mr. MARSHALL. I think you are right on target, Mr. Cummings. In fact, with the comments that you just had, I think you could have written 15 or 20 percent of the statement that I provided to this committee.

You have to look at, I think, terrorism on a couple of different planes. And I believe it was Mr. Flynn, in either his statement or one of the questions who referred to catastrophic terrorism. And we have to address certainly terrorism on that level, and that is the most visible, I think it is the most perhaps psychologically damaging to the Nation as a whole. But then you have this whole other level of terrorism going on in our country, and it's gone on for a long, long time, and that is, criminals who impose terrorism on their very neighborhoods.

I went to—here, not too long ago when I was still administrator of DEA, I went to a neighborhood called the Badlands in Philadelphia. And the things that I saw there just absolutely stunned me. I could not imagine in my—I mean, in my worst nightmare I could not imagine raising my family in circumstances like that, where good and decent people were literally held prisoner in their own

home, afraid to walk the street, afraid to go to the corner grocery store, afraid to go out to dinner or to a movie, those kinds of things.

And it seems to me, and in the months after September 11th, that kind of terrorism is every bit as real as the macroterrorism or the catastrophic terrorism that we are seeing. And the terror that is imposed upon an elderly woman who is prisoner in her own home and can't go out on the sidewalk for fear of getting mugged is every bit as real to those people in those neighborhoods as the World Trade Center and the Pentagon images are to the country as a whole.

Now, we need to look at that and fight the terrorism on both planes, and we have, I think, for a long time been reluctant to admit that drug crime and violent crime is terrorism, but in fact it is. And out of the proper duty to our citizens, we have to fight that. But as a more practical matter, in fighting that kind of terrorism, we also are able to impact the catastrophic terrorism, because, after all, it is much of what goes on in drug consumption neighborhoods and venues that fuels much of the catastrophic terrorism that we see, and in the future, will fuel it to a much greater degree than we see now.

Mr. CUMMINGS. But does this legislation do that? In other words, how does this—how does this bring everything under the Homeland Security Department? How does it—how do we make sure that we still strike that balance?

Let me tell you what happens in my neighborhood. And I live in the inner city. And I can tell you, when they heard about—when they heard what some of these—the bad guys heard about September 11th—it's just like when people see like the thing that happened in Watts a few years ago, when they take advantage of a situation. But when they heard that we were trying to secure the city, they said, oh, oh. This is the time. The policemen are now—they have got to be—our resources are limited and so now they are doing the security thing. And so the next thing—you know, I think that's why the murder rate goes up. And that's just my theory.

But I'm just wondering, how do we make sure that we, in crafting this, don't send that same message out that we have now sort of gotten away from the domestic peace and concentrated and—you know what I'm trying to say. And we are just concentrating on the catastrophic but not concentrating on the other stuff? Because drugs is a major deal.

Mr. MARSHALL. Congressman, here is how I think we do it. I think the reorganization is, and properly so, constructed to deal more with the catastrophic terrorism events. But, as I said in my verbal statement opening and I elaborated on my written, in my written statement, we have to, at the same time, ensure that we have a continued robust law enforcement, if not an increased—and my vote would be for an increased—law enforcement capability.

And, at the same time, we are addressing the catastrophic issues, we have to be addressing crime and drugs and violence in cities and towns and neighborhoods and schools throughout this country. And if we don't, then ultimately we are going to fail on the catastrophic terrorism issue as well, not only because it's the right thing to do and because it is terrorism in our neighborhoods, but also ultimately, it feeds the catastrophic terrorism. And let's not

overlook the fact that if we have these criminal groups that are continued to—allowed to continue to operate, that becomes, just as Doug Kruhm referred to the prison systems, those crime areas and those people that are doing that crime, they are going to become targets of recruitment for our external enemies, the catastrophic terrorists. So, we have to address it all just as aggressively one as the other.

Mr. CUMMINGS. Mr. Flynn, did you have something? I thought you were going to jump out of your seat.

Mr. FLYNN. Well, let me just, really, you know, very much in sympathy with the views that you have laid out here. For me, what's been frustrating over the last 10 years watching the crime dimensions percolate up, none of these agencies have run real well at the budgetary trough over the last decade. I mean, INS has been plugged up, but basically other agencies are barely holding their own while the bad guys got much more capable. And the fact is, but by not doing well what they have been given to do, they have created a fertile climate that very evil people with much more malicious intent can exploit.

And so now to suddenly just focus on going to terrorism as the source is going to miss that reality. We have got to walk and chew gum at the same time. We have got to deal with these issues in terms of the capacity. The administration has talked about coordination and communication, but there are three Cs; capacity is the third one. These agents—this is not going to come cheap. It's not just getting together and getting them to sing Kumbaya. It is going to require resources so they can do their traditional jobs well, and that allows them to build the relationships with the community.

So those folks who have eyes and ears out there say, hey, there is something here that just don't look right. Or it is going to allow, like in the Coast Guard, it's dealing with the fishermen and deputizing them while they're out there. Hey, you see something going on out there fishing, we can't patrol everywhere. Now, why does a fisherman talk to a Coast Guard? Because we rescue them once in a while, and because we regulate them.

The same thing is true with Customs' relationship to trade and so forth. So, if you try to strip away their domestic capacity in order to do counterterrorism, is form over substance. It is the substantive day-to-day job they do that is going to give us the capacity on both the needs the American people have—legitimate needs—plus deal with the terrorist threat. That's going to be the key to navigating this new department.

Mr. KRAMEK. We are missing a couple of pieces here in response to Mr. Cummings' question and to the chairman's question. For the past 6 years, the Department of Defense has recognized the type of warfare that Dr. Flynn spoke of. It is non-traditional warfare. If you were to read the joint military strategy that some years ago General Shalicashfeli put together and is now still part of the national strategy, it is not classified; it is published. It recognizes a non-traditional warfare and terrorism were the biggest ones as the type of warfare for the future.

And the Department of Defense has taken a lot of—paid a lot of attention to that. They have paid a lot of attention to it in the defense intelligence agency, DIA. Nobody has mentioned that here.

But DIA, NSA, CIA run together in the national assets that we have at our disposal. And then we have domestic law enforcement agencies that sometimes receive actionable intelligence from that type of thing.

In terms of prospective, how are we going to do it all, the Department of Defense budget defense, defense is standing up a new thing called of Defense of North America and Defense of the Homeland. Not Homeland Security, but Homeland Defense. Defense budget's grown to $360 billion. This new agency is 10 percent of that. Ten billion—it's $36 billion, thereabouts. And those budgets, we all testified today, are already—the budgets of the existing agencies that are insufficient to do what they have to do now.

In essence, no new resources have been put to this new homeland defense agency. Rather, no resources have been put to it, and people have made statements, written pieces, and gone on the record by saying the synergies and savings they are going to get from putting all these agencies together is going to be enough to improve the situation. And I don't subscribe to that one bit.

So we have grown Defense to $360 billion. This budget is $36 billion from a bunch of agencies that are underfunded to begin with. Mr. Cummings wants to know what we do when we are all turning 25 percent toward a new mission that's coming from the other things that are not resourced properly now.

We are going to have to put some money where our intention is to make sure that this is done right. If we are going to reorganize, find out what the goals are, the objectives are, how we are going to measure it, and then fund it properly to do it. It's not going to cost $360 billion, but it's going to cost more than $36 billion, because that's just the existing budgets now.

Otherwise, as Dr. Flynn relates, someone is going to be successful at finding our soft underbelly. We are talking about moving blocks around on the playing board without increasing the number of blocks. We need to increase the number of blocks that we have; we will not be successful and people will continue to take advantage of us.

One final comment on intelligence. My colleagues at the table and I worked hard over almost a 10-year period to try to do something about intelligence in law enforcement related to the war on drugs. I would tell you that over 10 years ago, 90 percent of what was done in drug interdiction was based on border security, trying to be in the right place at the right time. With the proper application of actionable intelligence, I would tell you that, in my opinion—and certainly Donny and Sam add to this or correct me—perhaps 85 percent of the actions that are taken in the drug interdiction now are based on some sort of intelligence and knowledge.

And intelligence centers have been set up using national assets from the Department of Defense, using the DEA's assets, using that from Customs, using that from NSA, CIA, FBI into intelligence centers that fuse the intelligence—and this is the idea of this new agency, supposedly—and then providing those law enforcement officials that are required to take action, actionable information and tactical information so law enforcement can take place. Unless we use every aspect of the intelligence community,

both international, domestic, and defense, the DIA, we are selling ourselves short.

I would tell you some of these agencies already have set up quite robust counterterrorism cells. I would also tell you, because some of the law enforcement agencies aren't subscribers to the National System, that they won't know about it unless they are told, and that methods and sources have to be scrubbed to protect agents, which is always a major issue.

So just talking about the FBI, my point is, is insufficient. We need to talk about the entire intelligence system for the United States, if in fact, this is the new warfare that we should be protecting ourselves against at least for the next 20 years, if not for this century, as Dr. Flynn relates. Thank you.

Mr. SOUDER. Ms. Schakowsky.

Ms. SCHAKOWSKY. Thank you, all of you, for your very important input. I really appreciate that.

Dr. Flynn talked about the importance of doing postmortems. You were talking about the difference between breaches of security and total absence of security. And then you gave an example of, who will inspect containers? And, that if we are still here months or years from now questioning whether who is going to—you know, who is really inspecting containers and we are not, then we have failed in our mission.

And then Mr.—is it Nunez?—was saying that just putting everybody together without changing the agencies themselves is not necessarily going to guarantee either better law enforcement, drug interdiction, or anti-terrorism activities. And I'm not quite sure exactly what that means, but I think I'm getting the gist of some of it here.

My concern is, should we be making first things—first out of the gate a laundry list of things like, are we inspecting containers? I mean, I am just wondering if we are—I'm trying to think—if my house were robbed, I think the first thing I would do is try and figure out if I need new locks on the doors and a security system, and then figure out if it's a neighborhood watch and if we have to bring together the police and, you know, the more structural things.

I am wondering if we have done a postmortem that looks at very—in a clear-eyed way, what were the holes? Do we need to add more resources to doing those functions?

You know, I'm certainly not against the Department of Homeland Defense, but I'm wondering if we, first of all, don't assess exactly what went wrong in a very clear way, if that isn't the first thing that we need to do, and maybe do address those things first.

So, whoever wants to answer them. Mr. Nunez.

Mr. NUNEZ. Can I start with a brief response? I'm sure that Customs and INS have all kinds of figures, any figures you want on how many containers come and what percentage of them gets searched and what the criteria are. It's all routine. We know that. I mean, I don't know that I can tell you off the top of my head, but I think that information is available. But let me give you an example from what I have seen for over 25 years, I guess.

There are people on the border, inspectors from Customs, INS, there's Border Patrol agents, some agriculture inspectors that are there. They are doing their job. But they have been told for the last

25 years that it is more important to keep the traffic moving than it is to find drug dealers or terrorists or illegal aliens.

The average time to inspect a vehicle in San Ysidro, which is the largest border crossing in the world, is 45 seconds. Since September 11th, the inspectors have slowed things down and started spending more time inspecting every car and every person coming across. That's good. It's good for law enforcement. It's good for security of the country. It's good as an anti-drug message.

I mean, the caseload in the Federal court in San Diego has dropped precipitously because the drug dealers aren't stupid. They know that there's greater scrutiny at the ports of entry. So that's good too.

So in some cases, we just need to let our inspectors do their job unimpeded by, you know, the industries that just want the goods to come in as quickly as possible, as few questions being asked as possible. It doesn't necessarily. Now if you added more inspectors, obviously you could speed that process up a little bit; inspect more containers. Instead of looking in the trunk of every 100th car, you could look in 2 out of 100.

You know, you could do a lot with a relatively modest investment in inspectors. But it has always been a battle on the border between facilitating trade and commerce and the flow of people, immigrants, and the inspection of visas and, you know the airlines used to call every summer when I was at Treasury and complain about how long it took people to clear Customs and INS. You know, they take a 10-hour airplane flight, they land in the United States, and then they have to stand in line for 4 hours.

Well, you know, sometimes it takes as long as it takes. And I think now, since September 11th, we're more aware of the fact that prudence may be more important than facilitating some of this cross-border activity. There's a cost to industry. There's no question about it. There's a cost and inconvenience. I mean people who want to go down to Tijuana to play golf or have lunch or have a beer, they're not going to go as often. People from Mexico who come into the United States to buy goods at Wal-Mart in San Diego are not going to make as many trips anymore, so it has an effect on commerce. So we have to be willing to balance those competing problems.

Mr. BANKS. Indisputably, we need more resources in order to contend with all of this. But quite frankly, we're not going to work our way out of this with brute force. As Mr. Nunez says, we know some of those numbers. A container drops off a vessel every 16 seconds in Long Beach. There is no way you can inspect all of those containers. They only examine a fraction of the containers that come in. But the real issue comes down is are you examining the right ones? Are you using the data sources and the knowledge management and the technologies to really focus in on the ones that you want to go after.

So it's one thing for resources. It's another thing to try to deal with some of this with greater scrutiny. But one of the things that has to happen as a process, at least in my estimation, is we all need to rethink this paradigm a little bit. We need to build the information technology tools in order to be able to make sure if we're only checking 2 percent, absolutely the right 2 percent. What you

need to know is you need to know who touched that freight? Who owned that freight? Who shipped that freight? Who transported that freight, and all the individual places along the line in that international supply chain. That is what you need to know.

Customs and all of the other agencies need that information in order to be able to identify the high risk potential, high risk parties that are involved in that process. But some of this is also building the partnerships with industry. Industry, the international trade community, the international business community, has spent billions in improving what they call their supply chain management systems. They want total visibility from the time of manufacture all the time to the point that they sell it to the ultimate consumer. They know who touches it. They know when it's coming. They know who manufactured it and what we also need is we need to build some partnerships with those people to leverage some visibility into their international supply systems.

The government doesn't have to spend the money to build those information systems. Industry has them. What we've got to do is be able to reach into some of that critical information, build those partnerships and where necessary, even legislate requirements so they provide some of that information to us to be able to do a better job. We need to rethink all of this process.

Is it correct that we should be doing it at our borders? Commissioner Bonner says you inspect a nuke in a box at our border, it's too late. What we need to do is we need to push our borders outward. We need to start looking and providing these large x-ray systems and large gamma ray systems so that was we start doing checks, even as it's overseas before it departs for the United States.

We need to be able to select what are our high risks targets before they hit the water on their way to the United States. That's one of the things that we need to do. So I don't disagree with everyone here that we've got—there needs to be more resources. There needs to be more focus brought to bear on this exercise. But we also need to sit down and we need to force everybody to go back and rethink how we're doing business so that we do business a smart way.

Ms. SCHAKOWSKY. Thank you.

Mr. SOUDER. I have some specific questions I'm going to try to go through here, and then I want to make this open-ended that if any of you who want to submit written comments on anything you heard today in whatever detail you want, we will go through them. We are crashing hard and every question you answer raises some more. But there are a couple I want to zero in. What do you think, Admiral Kramek, of one of the things that is been floated out, vis-a-vis the Coast Guard that Chairman Young is talking about doing in his committee is fixing the percent?

Obviously, I don't favor fixing the percents because, in fact, we're plussing up Homeland Security. If you fix the percents, you could, in fact, increase the fisheries proportion as you increase the budget. One of the things that I've thought about is a hold harmless provision, possibly at 90 percent of current saying there will be some efficiencies.

What's your reaction to some kind of provision like that would force Congress then to say there is a hold harmless provision un-

less you explicitly waiver reductions because of a risk? Let me give you one other specific piece of information. Not counting the supplemental, while drug interdiction dropped from 18 to 13 percent, the amount of dollars didn't drop that same percent because there was a slight increase in the budget. In fact, with the supplemental, it might be very similar at 13 percent. But maritime safety dropped from 456 to 223, so clearly, even with the supplemental maritime safety took a big hit in the budget, that under a hold harmless provision at 90 percent, that would go up and we would either have to address the maritime security or have a specific waiver and transfer from fisheries, excuse me, from maritime safety to that, in other words, acknowledge what we're doing. Do you have other suggestions of what we might do in the overriding bill to make sure that we clarify what exactly we're doing when we make these authorizing statements?

Admiral KRAMEK. Yes, I do, Mr. Chairman because we have a system of government that should properly take care of that, and it's especially meted out here in the House of Representatives and in the Senate with the both authorization and appropriation hearings that take place. And by that, I mean performance of standards have been set for all agencies in government to do what the executive branch, the American people and the Congress have tasked them to do.

Search and rescue is a good example. Performance standards have been set that any search and rescue case called in should be responded to in 30 minutes. 90 percent of the lives shall be saved and enough resources shall be provided in the maritime area for the Coast Guard to do that. There's no performance standards set for this new agency. And so it's hard to tell how much more we need.

I would agree with Sam that—Sam Banks, that we can certainly work smarter. But you cannot, in my opinion, set a hold harmless clause and say, well, everybody's got to be resourced at 90 percent. In the numbers that are used, the numbers that we see in the media and everywhere else compare the 2002 enacted budget, to the 2003 request, which hasn't been approved yet and I understand it's put on the back burner while you deal with emergency supplemental No. 2.

So, I mean, we're dealing with a 2003 request that I don't think has even been heard in the context of the new Homeland Security department and, in fact, needs to be certainly acted on this summer sometime. But those numbers are not real to me because all they have done is re-rack some moneys, and we have to look at the 2003 request, not what was enacted with the supplemental. Supplementals are there for particular reasons at particular times.

The budgets put together based on performance standards for every mission on what the executive branch and Congress have decided should be performance of a particular agency. They should be resourced to those performance standards, and right now we're borrowing from Peter to pay Paul.

Mr. SOUDER. As a practical matter you have been through this budget. That isn't going to happen. What we're going to have happen here is that authorizing is going to be done on the appropriations bill or unauthorized appropriations, and therefore, it comes

down to who's paying attention and who's got the most leverage at the end if we don't do it in this homeland security bill.

Admiral KRAMEK. Now, it maybe—it may be, I remember one hearing not too long ago when I was asked how many people would perish at see if we took away 10 percent of the search and rescue money from the Coast Guard and put it toward drug interdiction. And so I told him exactly. I think it was 1,500 people. And the answer from Congress is that even one is unacceptable, and so that funding was restored, and so those performance questions we need to ask ourselves. How many foreign flag vessels do we want to allow to come into our harbors that are not properly inspected under the Marine Safety Program?

By the way, every passenger vessel that visits the United States is a foreign flag vessel, every single one, carrying 6 million U.S. citizen passengers a year. How many of those do we want to cut back on the safety inspections, the liquid natural gas ships going to places like Cove Point which, is supposed to reopen up in, oil tankers? How much do we want to cut back on all that and to put at risk other things that we're all responsible for, whether it be the marine environment or the safety of the vessels or hazardous materials.

I think the answer for the American public was we don't want to cut back on any of that, but we want you folks to take care of Homeland Security, too. So, what's that going to cost? The agencies all have a number. It's all in their budget. It's not very, very much more than what was originally asked for before September 11th. So my pitch, again, is let's look at the Delta on what it takes to do Homeland Security, if we're serious about it in this country let's provide it so we can take care of the other things that you and Mr. Cummings are concerned about, your constituents are concerned about that we still need to do.

Mr. SOUDER. Mr. Banks and Mr. Nunez, one other category, let me talk a little bit about Treasury. That in the Department of Homeland Security, we already don't have ATF, which is left over in Treasury. And what is your reaction, first, Mr. Banks then Mr. Nunez, of why shouldn't some of the financial missions of Customs be consolidated into and kept in Treasury, combined with ATF and some of the others? In other words, money laundering is a critical function here partly—well, let me first ask, why shouldn't the financial services be left over and tariff functions, financial missions money laundering be combined over in Treasury as opposed to in this agency?

Mr. BANKS. OK. Thank you, Mr. Chairman. All the money belongs in the Treasury. But quite frankly the money laundering enforcement issues, if you take a look at the primary investigative tool they use to even track down some of the al Qaeda network, was all money laundering investigations. If you take a look at where DEA works on the narcotics, it's heavily engaged in money laundering. What's driving all this international criminal enterprise that Dr. Flynn's talked about is money to some extent and money laundering. I think it would be a serious mistake not to have a money laundering component within that Office of Homeland Security.

Mr. SOUDER. Let me interrupt you a second and get back, because it's not compelling to argue that money laundering is one of the primary ways we catch bad guys. Obviously that is true. But under that argument, we would put DEA in, we would put ATF in, and we would move it. You made an earlier argument that we shouldn't break up Customs. Could you separate how, if we started to separate all—because I've wondered a long time ago why money laundering operations aren't consolidated more. What would it do as a practical matter inside Customs if you tried to separate money laundering?

Mr. BANKS. I think you—again, what you would take away from the investigators that are trying to do the money laundering is the inside knowledge they need to have in terms of what's happening within trade. What you've got is the trade experts that know all of these multi national corporations, they know the corporate structure, they know the ownership of those organizations.

That is absolutely fundamental to the investigators that are trying to do this job. They actually see the flow, and even when you get into the black market issue, they see the flow of illegal goods that are basically the outgrowth of money laundering. So that is where I get nervous about the separation. Do all the of the money laundering responsibilities have to be centralized anywhere? I don't know if that is true. I guess what I'm suggesting to you is I think that there is a money laundering component that should be part of the Homeland Security process.

Mr. SOUDER. Are there any more money laundering things elsewhere that would relate directly to homeland security that you would put into this department?

Mr. BANKS. Good question. I'd have to think about that a little bit, Mr. Chairman.

Mr. SOUDER. Will you chew on that a little bit because if we're going to leave—there should be a primary place where this is done and then there may be secondary.

Mr. Nunez.

Mr. NUNEZ. Yes, Mr. Chairman, first of all, I agree also that—I think I agree, that Treasury needs to maintain some sort of investigative function within the Treasury Department. One of my predecessors, several years before I got there, had proposed a plan to consolidate Treasury law enforcement into what would, for lack of a better phrase, be called the Treasury Bureau of Investigation, multiple agencies, where all the investigators from Customs, IRS, Secret Service, ATF whoever would be involved in one bureau focusing on all the missions of the Treasury Department. And they would be responsive and supportive of the underlying structure.

That plan never advanced. But I happen to think that it was a good plan when it was proposed and, you know, circumstances never developed to allow it to go forward. But I think it deserves some study at this point. You could take all of the financial crimes investigations, if you will, done now by Treasury, consolidate them. I don't think it makes sense to move secret service out of Treasury into Homeland Security if you're going to leave the FBI out. I mean, the secret services role in terrorism is pretty limited. I mean, certainly they have an interest in the intelligence. They

need to protect their protectees, but they don't have to be in Homeland Security to benefit from that information.

One of your specific questions, in 1989 we, Treasury created FINCEN. Specific purpose was to analyze money laundering trends and to investigate the Bank Secrecy Act violations and to feed that not—but their intelligence and an analytical function. Their function is to then feed the information to DEA, to Customs, to the FBI, to whomever, to go do the criminal investigation. That model works fine.

So you could, I think, combine and consolidate a lot of these forces, make it more efficient and more effective. I—you know, I happen to believe that the FBI is way overstressed with too many priorities. I mentioned that before. I think now is again the time to take away from the Bureau those things that they don't need to do that someone else can do. They've got 2,000 agents. Well, they didn't get 2,000 new agents, but in 1981 when the President gave them drug jurisdictions overnight with the stroke of the pen, 2,000 more agents were added to the war on drugs.

What's happened to those 2,000 man hours or man years since then? I don't know. I mean, did they get siphoned off to go do other things? If they exist, give them to DEA. Let DEA absorb all of their expertise their knowledge and continue the work. There are FBI agents working cases today or they were on September 10 that were not—that are not working them anymore.

So clearly the drug enforcement effort within the Bureau was reduced. And if they are going to reduce it more by, I forget what Donnie said, 500 or 600 or 700, 400 agents you know, that's 400 man years of cases that are not going to be worked anymore. Are all of the agents in the FBI now going to be working on counter terrorism? I don't think so. So let's simplify the bureau's mission for it, transfer those missions to DEA or to secret service or to ATF or to Customs and let the FBI focus on what it's highest priorities are, and bring them into Homeland Security.

Mr. SOUDER. Mr. Flynn would you comment on why secret service and Customs would move in but not FBI and other ATF and other financial tracking if it's organized crime is behind a lot of the money laundering.

Mr. FLYNN. What's clear is there's no clean line between open source intelligence and then intelligence collected by the traditional intelligence community. And of course, that's gotten fuzzier as organized crime and terrorism itself is merged, and we get the national security and law enforcement mix. It's an uncomfortable one that is difficult for the bureaucracy to handle well.

I think the guts of most of the data we need to detect bad people doing bad things is often in the open source realm, and that is almost in the regulatory realm and information is often collected by the cop on the beat versus that is squirreled away in Langley.

And so the notion of trying to consolidate some of that oversight in one place is where I think the President is going with the recommendation that he has in terms of the fusion of intelligence function within the new department. But by definition, there's blurred lines. So the Coast Guard now is a member of the intelligence community so it will have access to the traditional mass security intelligence apparatus. Customs is not.

Secret Service has also a very splintered line there that makes this difficult to do. You know, well, some of the function of all the U.S. Government is providing for the safety and security of its people. You know, it's a challenge to say where do we stop this line. But I think what's just as an illustration of the kind of dilemma we're facing and why I think there's some need for due attention on getting largely nonclassified information under one roof and effectively fused is an illustration of—let's—I had talked some time ago about the container, weapon of mass destruction being put in a container and moving through the inbound system and potentially posing a real threat.

An equal one is, let's say a year from now, we have al Qaeda II and the President, this time we have human intelligence. We have an intelligence operative in the network and he says we have just loaded a weapon of mass destruction in a container and it's heading down the street in a truck toward a barge. So it's hard intelligence and it comes to the President, and the President convenes a national security team, and he turns to the Commissioner of Customs, and says, well, where's the box? And the Commissioner says well, it could be coming into Vancouver, or Seattle/Tacoma or San Francisco, Oakland, or L.A./Long Beach or maybe coming through the canal or any of the other ports. But we hope to get the paperwork right after it goes through.

I'm not saying that's not—there may not be a way—there may be a chance that we'll catch it, but the system right now is so porous that you have hard intelligence that's coming, and you have nowhere to pinpoint in the system where the heck it is, and under the current construct, if it comes into L.A./Long Beach, it has to go 14 miles inland to get inspected, because GSA couldn't afford to buy the real estate in the port. So the most densely populated part of the country.

I mean, this is the mess we're in right now that is going to make the need for, and I think the President quite properly says at least we should get that house in order. And the agencies who collect that information, and you can diffuse it, that's with regard to people, with regard to conveyances, with regard to cargo. Let's at least get a full picture of that. It gives us a base line and then see if we can tether in more effectively to the national security establishment. That, I think, is the thinking behind this.

Mr. SOUDER. Let me pursue just a couple of other things with that baseline of—in effect, you've continued to come back and defined this more or less as a border homeland security agency, because the truth is, everything has some degree of homeland security, and you could have the whole Federal Government under it. So if we do that, why isn't EPIC in this? You used an interesting term. You said non classified intelligence. Why isn't EPIC in RISS, for example?

Mr. FLYNN. I don't have a clear answer for that. You know, clearly, again, folks are struggling with how much to fit under this roof and still not to lose form. I think that it does make sense that the—EPIC I think is an omission that could, you know, certainly be entertained as it's put in here overall.

Mr. SOUDER. Any other comments on EPIC or RISS or why you wouldn't put those in?

Mr. MARSHALL. Mr. Chairman I think that when you talk about EPIC and RISS and I would put perhaps the NDIC in that same category you have a good model for intelligence sharing. I think it would work equally well, perhaps, to build on those models as intelligence sharing mechanisms or to create a parallel mechanism.

You could make an argument for or against the wrists and EPIC and NDIC for that matter, and then I would like to make just one more comment. Mr. Flynn mentioned the cop on the beat and the kind of information that they come up with. I think one thing has been probably overlooked more than it should in this whole reorganization, and that's the value of our State-local law enforcement counterparts out there. Nobody knows the communities like State and local law enforcement.

The Federal Government is never going to put together a mechanism that matches that capability. State and local law enforcement have numbers out there that the Federal Government is never going to match. And if we put this thing together without some inclusion and considerable thought about the role of State and local law enforcement in this whole homeland security issue, we're missing the boat big time.

Mr. SOUDER. Admiral Kramek, on your era, you wanted to make sure that the, or suggested that the Coast Guard should continue with the coordination of the drug intelligence center. Do you see, in other words, if we, in effect, ideally we would have a model like that for terrorism like we do for narcotics to the degree that they're separated? But without the, initially the NSA, the different defense agencies, without the CIA, without the DEA, without the FBI, we have certain pretty big centers of intelligence not in a homeland security agency.

Would you see in this department the potentiality of at least using the model on drug intelligence for all the—whether it's nonclassified, if that is a term we use or all the other things that collect intelligence other than the big ones that basically can't be hugged in at this point, and then this agency then share, like the drug intelligence does with the other agencies so that there's at least some coordination. Would you see an assistant secretary? Could you think about that a little bit and how we might use your model and how we've done drug intelligence to somehow pull some of the other intelligence in? Because we—intelligence, as all of you know and have said at different times, you can never catch a criminal if we didn't have intelligence, and yet we are setting up an agency that's missing so much of it.

And to the degree it's in there, it's not clear to me how these things are going to get to synergism if Customs stays intact, Coast Guard stays intact, the Border Patrol, INS stay intact underneath that. Clearly, we got a warning sign the other day in our hearing because Senator Lieberman, Senator Specter says, of course we are for this merger as long as the employee unions aren't merged. And that's off the table to talk about employee structures. That's a pretty big thing to have off the table, that this presents big things if we don't have the intelligence.

Do you have any initial comments on the intelligence? Then I have one more line of questions.

Admiral KRAMEK. Well, I think the administration's proposal proposes to put a fusion intelligence center in the new department. And I assume when they say that they're modeling things we've done elsewhere. In the war on drugs, for instance, all of the agencies involved in that, some 32 Federal agency need information and intelligence. Some have intelligence from the Defense Department, and so in its wisdom, the United States tasked the Defense Department, with standing up interagency task force in the east and the west, which is really a communications and intelligence fusion center that we all participated in and all the data goes there from all agencies.

Everyone participates. DOD, Coast Guard, Customs, DEA, NSA, CIA and all of it is fused into an actionable result that's given to an operator, whether it be Coast Guard, Customs, DEA, to go out and interdict, if you will, and stop the drugs from either coming into the United States, or better still, take down the entire network that finances the whole thing and arrest everybody on both sides.

That model has been used in lots of other instances. But what intrigued me was when DEA stood up EPIC, and stood up the National Drug Intelligence Center. Those were all good things. But until we really started to be able to use the sources from the Department of Defense from the things that they could see, and from the things that they did, and from CIA, and brought all that together, we had a much more complete picture. Is it a total picture? No, using all the national resources the picture got clearer, though, however, and I would say that 85 percent of our effort was based on some sort of then knowledge and intelligence.

The same type of model can be used for Homeland Security. All those agencies don't need to be in the Department of Homeland Security. What they need is an intelligence fusion center who gather all of the actionable intelligence from the other agencies and get their recommendations, and they make heads or tails of it. And then they decide what warning to put out to various agencies of the United States to protect us for national security. You don't need to merge all of these intelligence agencies in there. They're all working and can work very well by themselves. But should they share more? Yes. And should they be consolidated? Yes. But you will have to deal in closed session and in closed committee with the threat that doing that has to sources and methods in our intelligence infrastructure.

Mr. SOUDER. Compromising the more people.

Admiral KRAMEK. We have to be very, very careful because we're talking about, you know, a domestic agency for homeland security using intelligence that we're collecting for our defense, and there's a strong connection there, but we have to decide on intelligence and the law with that respect. And there are lots of scholars who have a lot to say about that, and I would recommend, Mr. Chairman, that you take a look at that a little bit. Because I think it's paramount to what type of intelligence center you would want to have in the new homeland defense agency.

Mr. SOUDER. We get a synergy for effectiveness, but we don't get a cost synergy when what we are adding are new coordination centers, and that's how important in how they're putting this agency

together, because if we're putting together new groups to coordinate, that's not a net reduction. That's another layer.

Let me ask one last thing regarding the drug czar which was alluded to, I believe, by Mr. Nunez. That if we look at this as primary focus based on the agencies that were put into this as a border, primary focus is border, secondary focus is other things, defining the border loosely, meaning it could be preclearance of cargo in Singapore. It's the Customs Office in Fort Wayne, Indiana at the airport. It's the INS State Department clearances overseas. And if we see the drug interdiction efforts of Coast Guard and of Customs and of Border Patrol put inside this agency, and if we see the nexus of the financial sources and the long sought-after goals of organizing the border, better that were being done, not to mention intelligence clearing, which interconnects with HITA, what precisely do you see the role of the drug czar in this network to be, and are some of the functions here should we look at different ways of configuration of that because a lot of this is what the drug czar is supposed to be doing?

Admiral KRAMEK. No, I don't see the role of the drug czar changing. If you were to look at the national drug control policy strategy that's put out annually, possibly 40 percent of it or less is interdiction. The majority is treatment programs, local law enforcement programs, all of those other things. Now, that's not to say that the interdiction piece—and when I was the interdiction coordinator, couldn't be coordinated more efficiently by having all of my colleagues at the table, and we were all working for the same boss. That may be. But the initial drug control policy only has a piece of it as far as interdiction is concerned. Education is an important piece of it. Treatment is an important piece of it. And so having all of that, thinking about putting that in the new homeland security I don't agree with that at all. I think it needs to be separate and again, perhaps the interdiction piece could be more efficiently accomplished, and there would be some synergy to do that. But I don't see it changing the drug czar's role at all.

Mr. SOUDER. Mr. Nunez.

Mr. NUNEZ. The concern that I have is if the drug czar continues to have the function that he's been given for the last decade or more, of certifying the budgets of all of these agencies, wherever they are, whether they're in Treasury, Justice, or the new homeland security agency, his mission is to make sure the Federal Government is paying attention to the drug war. If there's a conflict, if the Secretary of Homeland Security says, well, I've only got so much money I can put in my budget this year, and so I have to take some away from this drug interdiction or drug enforcement or drug treatment, you know, area, to—in order to fund some other terrorism thing, I mean, then you've got a conflict.

Mr. SOUDER. Well, what was the answer to that question by the way.

Mr. NUNEZ. I'm sorry.

Mr. SOUDER. We know the answer to that question, by the way, which is why the next question I asked is important. Homeland Security is going to win, which means that we've changed the mission of the drug czar but not acknowledged it.

Mr. NUNEZ. We subordinated it. We've created a priority. We've said homeland security comes first. Drugs are second. And maybe that's right. I don't know. But I suppose the President ultimately, and the Congress, get to decide how to balance those two high priority issues.

Mr. SOUDER. Do you have a comment, Mr.——

Mr. FLYNN. Again, the overarching rationale, and this has been difficult because, you know, unfortunately, the organization came out before there was a strategy, and the guts of how this thing should be done—we should have a strategy first. But the overall thinking behind the Hart-Rudman's Commission's recommendation was the strategy is that the traditional national security establishment deals with terrorism at its source; that it is trying to run in the ground bad guys when we found them.

But once they're on the move, that is, there in our international transportation and travel corridors that we need the means to be able to detect and intercept them, and there is a real problem with coordination there.

The second piece is some of those guys will get through and they will take on our critical infrastructure. So having the capacity to make sure that infrastructure doesn't melt down, that there's some protection is the next stage to limit the disruption.

The third piece is there still will be consequences and the ability to have a quick postmortem and put things back together, again, is going to be the key to having an overall approach to managing the risk of terrorist catastrophic terrorism threat directed at American soil.

And so the President has hit all those pieces. He said the border stuff up front is key. He's put critical in the infrastructure protection. He's talked about FEMA because FEMA has relationships with localities and States for the response and is very much the lead agency for dealing with those first responders, and he said you've got to get the intelligence right. That's not all of homeland security. Homeland security is a core mission, again, of government. But it's one right now that is woefully inadequate in trying to deal with that issue.

The amount of money we are spending on going to terrorism source is huge numbers. And it's appropriate when we know bad guys to get there, but just like we can't eliminate drugs at its source, we need a layered approach developing the capacity for the agencies of debt, you know, represented here today, to be able to play that increasingly prominent role in national security. We have to have a conversation about this in terms of the organization, but ultimately about the resources. We're not going to get to where we need to go if we're not willing to open up that box and carry on that conversation.

Mr. SOUDER. Well, thank you for your patience, Mr. Cummings.

Mr. CUMMINGS. Thank you very much. First of all, I want to thank you all for your testimony. You know, as I sat here and I listened, I started to ask myself the question, are we going to be better off or worse off? That is, in listening to what the Admiral had to say, I'm wondering if we put together a department that doesn't have the adequate resources, are we better off? I don't think so. And I worry—I'm concerned that we will—that, first of

all, I think this is such an important issue that if we're going to do it, we need to do it right. I understand what you were saying, Dr. Flynn, when you were saying that we need to—since September 11th, we're sending—we need to send a very strong message, not only to outside enemies, but to ourselves that we've got it together.

But I'm telling you, the more I listen to what you all have said, it just seems like there are so many issues, and it doesn't seem like something that you can do overnight. Trying to bring all of these—this together. So what we're trying to do is coordinate agencies, we're trying to coordinate information, trying to, I guess, coordinate effort so that we can protect this country.

We've got some big problems. Going back to the State and local situation, you're absolutely right. Boy, I have got—I have been sitting here too long. I don't have my glasses.

Mr. Marshall, you know we had an incident in Maryland where they just weren't—the mayor came up here, and the mayor of Baltimore came up and complained that we weren't getting information from right after September 11th, that there were so many things we were eyes and ears all over the place, but yet, and still we didn't have the information to act on it. Apparently they had stopped somebody involved in this whole September or connected with the September 11th events, and didn't have enough information from—if other agencies had been cooperating with locals and State folk, they possibly could have at least detained this person.

So it just seems as if we've got a lot here. And I—and so then I go back to the Admiral and when he talks about this—these intelligence centers.

And I'm wondering, when you take all of what I just said into consideration, I'm going to tell you, I mean I have been here 6 years and I don't—I think—I don't think the Congress is going to give up the money that it really needed to do this. I mean, I want to be optimistic, but I don't think that's going to happen. I want to believe it.

So if we try to put together this agency with insufficient funds, is it better that we go to what the Admiral talked about. I know you're not advocating it. You just talked about maybe having something a little less than what the President is talking about, and clear me up if I'm misstating, and having some kind of way, having some of these folks coming under this umbrella called the Homeland Security Department. But then having another piece, another arm that says this is going to be our center where we bring together information. Is that accurate, Admiral, is that what you are talking about?

Admiral KRAMEK. You can do it that way.

Mr. CUMMINGS. Fusion center.

Admiral KRAMEK. That's the way the Department of Transportation was initially organized in the mid 1960's.

Mr. CUMMINGS. But is this too big? I mean, is this too—do you understand, Admiral?

Admiral KRAMEK. I understand what you're saying, you see it's a matter of choices are we going to improve things with the new department. In my opinion, we will improve homeland security with the new department. But the way it's set up now, at the risk

of not doing other things that we thought were important before because homeland security has taken a higher priority.

Now, if it's all right with the President and all right with the Congress, and all right with the American people that we don't pay as much attention to maritime safety, to drug law enforcement, to the other things these agencies were doing, then that's something that they vote on and they—we determine as a democracy to do.

Right now I think we all clearly know what mission No. 1 is, and I think that will improve if we put all of this in the new department: But some other things will go by the board and I think that's what I said today and what I've heard some of my colleagues say, and a lot of the questions you're asking have some great concern about that.

Mr. CUMMINGS. How would the Intelligence Fusion Center—is that your own term?

Admiral KRAMEK. No. We call it fusing intelligence, when you know, sometimes when you find out where the bad guys are and you have to go take action on them, and your agent has to go into court in open court, we don't want to let everybody know how we found out where it came from or who found out, and we have to go into closed session, or we have to keep that classified, and so therefore, a fusion center takes all sources of intelligence, fuses it together, it's been called that for a long time, maybe a decade, maybe longer than that.

It's the concept that EPIC was put together on, and the concept that the Joint Intelligence Tasks Force has been put together on the war on drugs and other intelligence centers where everybody is there and they all look at it and they decide yep, it's met criteria 1, 2, 3, so we need to act. We'll give it to that member of the Department of Defense or we'll give it to that law enforcement agency. But it has to be protected as to sources and methods. But they can take action on it intercept that person or to do whatever needs to be done to carry out proper law enforcement. That can be done, in my view, quite simply in the Department of Homeland Security on those issues that have to do with Homeland Security.

Mr. CUMMINGS. And how would that differ, then, what you just said, how would that differ from what the President is talking about?

Admiral KRAMEK. I don't think it'll differ very much. It certainly wouldn't move the FBI into the Department of Homeland Security or the DEA into Homeland Security. I don't think any of those agencies should be in there. They have other things to do.

Mr. CUMMINGS. But you still get the benefit of the information.

Admiral KRAMEK. Sure. You know, if DEA is onto a tremendous narcoterrorist network, they have information that this is going to result in terrorism somewhere that is going to affect us or fund it in some way, shape or form, that should go into that fusion center, so that then Homeland Security can properly act on that and it becomes a national security issue. It shouldn't be just kept within the agency who found it out.

Mr. CUMMINGS. Anybody else? Yes, Dr. Flynn .

Mr. FLYNN. I just want to say when we get to budget issue, the situation right now as illustrated by the President's budget next year, is these agencies within their parent departments are dealing

with a tradeoff of budget dollars, and Homeland Security is going to get a bigger chunk. That's going to continue to be an issue as long as bad guys continue to do bad things here.

The parent departments for these agencies right now are not effective advocates for giving them sufficient resources. I think the silver lining I see in the Department of Homeland Security is you have a first tier cabinet officer who is advocating for those agencies, they have to be plussed up.

The key will be will he recognize that it's, in doing their core business, the one that exists now that will give them the capacity to provide the Nation true homeland security, or are we just talking about cosmetic homeland security of having, you know, guys in uniforms hanging out in front of baggage terminals. That's the key juncture we'll have to cross.

But it's these agencies doing their day-to-day job by community policing provides us the capability to deal with crime in the neighborhoods, not guys sitting in precinct houses. That's what we have to come to, I hope, with Homeland Security. I don't see how the existing budget model where they sit is going to get us where we want to go.

I see the atrophying of these agencies traditional missions, and I know not enough value added on the homeland structure.

Mr. NUNEZ. Just a note from my experience at Treasury, every year the budget process would go forward, and Sam Banks and the people at Customs would send into Treasury a proposed budget, and all the other law enforcement agencies and Treasury would send them in, and then the people in the Treasury Budget Office would look at it and not understand probably half of what they were reading and cut it.

So one of the advantages of moving many of these agencies into an agency operated by someone who understand law enforcement is that they're going to get better treatment within that department. And with all due respect to the various Treasury secretaries over a number of years, you know, they don't get that job by knowing much about law enforcement. And so that sometimes has been a problem in getting the Treasury law enforcement dollars, you know, even through the OMB process, let alone through Congress.

Mr. CUMMINGS. Just, I mean, Admiral, if you had just some advice to give us, I mean, if you just had, in a warning, what would be with regard to this legislation?

Admiral KRAMEK. In my——

Mr. CUMMINGS. You may not have any.

Admiral KRAMEK. Well, it's kind of what I summarized in my statement and put in my written testimony. We're being very reactionary to the events of September 11th, even though it was a little over 9 months ago now. And we're being reactionary and we're trying to look at what happened and reacting to it. If we want a new Department of Homeland Security, it has a mission, the executive branch has defined. It does not have a strategy, does not have goals, does not have objectives. It has not said this is the resources we need to do the job right, based on raising the level of homeland security to a certain level that you can hold congressional hearings on and determine if that's enough, if that's adequate.

You know, what is it? What is homeland security? What's the level that we want to have? Do we want to make sure that 100 percent, we can guarantee that 100 percent of all containers that come into the United States don't have anything that will affect our security that could be done at a cost, everyone of them would have to be inspected by us before it left its port of origin probably, and then sealed in a certain way. What level do you want? And then what resources is it going to take to do that? We're rushing toward a conclusion without giving ourselves a performance measure or fully understanding what we want to do. And so I would do that just a little bit more carefully.

Mr. CUMMINGS. Anybody else?

Mr. Marshall.

Mr. MARSHALL. Yes, sir. I think the advice that I would give would be basically four items. No. 1, create the Department of Homeland Security I think that will add to our capabilities against the catastrophic terrorism. No. 2, do not create Homeland Security at the expense of standard traditional law enforcement in this country, maintain that robust, and if possible, even increase the individual agency's law enforcement roles.

Third piece of advice I would give is take advantage of our State-local law enforcement partners out there, and perhaps key piece of advice I would give would be really don't expect to do this at no budget increase. We must have additional resources to make it all fit together and do the job that we need to do on all fronts.

Mr. CUMMINGS. Mr. Banks.

Mr. BANKS. My recommendation, again, is consolidate, consolidate these agencies, look for those economies of scale. When I say bring them over intact, I don't mean everything has to stay intact. You have got to look for those economies of scale and push for that information sharing and take some of those best practices that are out there. Don't throw the baby out with the bath water. Don't start as if you're starting all from a whole new cloth again in building this thing and build it incrementally.

Mr. CUMMINGS. Again, I just want to thank all of you for your testimony. It's been extremely helpful to us. We have a major job to do as you well know. And it's people like you who, through your experiences and what you have seen and experienced and your knowledge that you have gained, to help us do what we have to do. I think it's important that we—and we will take this very seriously, because the future of America depends on it and generations yet unborn. So I just want to just say thank you very, very much to all of you.

Mr. SOUDER. Would you—what's your reaction to designating an assistant secretary for either narcotics or assistant secretary for reduction of financial resources for terrorist inside this department?

Mr. MARSHALL. Was that directed at me, Mr. Chairman, or——

Mr. SOUDER. Any of you. Because here's my concern. We know, we don't have to guess. We aren't going to have enough resources to fund current activities at the current level plus this department. We're already seeing it in the process and we know that's true because unless we get hit by another terrorist attack. In other words, we've got artificial goals, we don't have goals. The goal is to have 100 percent elimination of any catastrophic event. That's our goal

and that's, I believe, what the Vice President was trying to say is that's not an achievable goal.

We can work toward it and we hope to achieve it, but it is a standard that's—is it a 1-year goal? Is it a 5-year goal? Is it 100-year goal? And we know that the resources are going to go up and down, just like they do in the narcotics war and child abuse and missing children; that when you have a crisis people run toward it. To the degree you fix the crisis, they're ready to address another one.

If we don't get hit by a terrorist attack by October, there aren't going to be very many senior citizens asking me about terrorism, they're going to be asking me about what happened to my prescription drugs that you were going to pay for. This is part of life in government and in a democracy. And part of the thing here in the narcotics committee that we're watching is that anybody who's ever dealt with a narcotics issue knows that politicians have somewhere between 2- and 4-year attention span to this issue.

It's not that the issue goes away anymore than any other social problem goes away, but then you reconfigure. That's partly how so many agencies got into narcotics, and part of the question here we're moving several of the major narcotics agencies into Homeland Security that we all agree, I believe, that there is going to be increasingly a narcotics nexus to funding terrorism as well as other illegal—and the question is, should somebody in this department be either looking at narcotics directly to help coordinate those agencies within and make sure it gets some attention, or should we look at it as funding of terrorists, which gives us the nexus for looking at that and child traffic and other things so that there is an awareness of the interrelationship.

Because the danger here is because I'd had really thought this through today, but it's clear. The real fundamental assumption behind this is catastrophic terrorism. Yet we're throwing agencies in whose primary functions are day-to-day functions, not catastrophic, and unless we figure out how to blend the day-to-day with the catastrophic, we're going to see a major reduction in the day-to-day because of the goal of an almost 100 percent on catastrophic, and we need to figure out some ways to try to make sure that everything isn't obliterated in this bureaucracy when we started out, that in fact everybody doesn't see because I'm sure, also by the way that the Secretary of this agency is going to see their predominant mission is that their, what's their measurement of failure.

On what grounds would you be removed as a cabinet secretary. It won't be on whether computers got across the border; what the wait was at the border; it won't be whether or not there was a reduction in narcotics. It won't be whether a sailboat person was rescued. It will be did something blow up while you were secretary? And I just would like to ask your reactions about where we might deal with this to make sure there's somebody inside Homeland Security that's watching some of these other missions.

Admiral KRAMEK. Mr. Chairman, there's a significant distinction between this new department and all these other things that have been done before, which are the normal jobs of these agencies such as drug interdiction or immigration or border patrol. And that is, that Homeland Security, because of what happened, is now one of

our vital national interests because we've had a significant threat to our national security to our freedom. And this is the new warfare that Dr. Flynn described. Usually, almost all of those missions are addressed usually by the Department of Defense nowadays. This one is not. This is not called Homeland Defense.

It's called Homeland Security, and it's to our vital national interest. Therefore, it takes priority, No. 1, at least I think that's what a lot of people in our country believe. Given that, the other missions and the other things that we've done are secondary to that. If we don't want it that way, and we want to still keep doing those things, then it has to be resourced. But the distinction here is that this is in our vital national interest for survival of the freedom that we enjoy, and it is now something that deserves a good focus of our national strategy on how to deal with it.

It's different, I think, than the war on drugs. We made it pretty important, but it wasn't in our vital national interest on something that we'd go to war for because that was always the—that was always the criticism. The war on drugs was a misnomer. We never really went to war on it. We tried like heck to interdict it, to stop it, to educate and to do all of those things, but it was never a real war. But this is, and so there's a distinction that has to be drawn.

Mr. SOUDER. Maybe we can just go down and have any other concluding comments, because I appreciate your patience here, and if there are any other things you want to touch on, and then we'll finish the hearing.

Mr. MARSHALL. In my view, Mr. Chairman, it would be tempting to make an argument to put much more under this new department than is presently configured. But also, in my view, I think it would be a mistake to put too much under this new department. I think a good compromise and good approach for right now is really pretty much where we have gone, and that's to put the meet and greet agency the first line of defense agencies under the new department. You could make an argument for putting FINCEN for DEA, FBI, the intelligence fusion centers in law enforcement, the RISS and the EPICS and things of that sort.

But I think, as I alluded today in previous questions and certainly in my written statement, I think if you do that, you run the risk of diluting all of those other day-to-day single mission law enforcement agencies and their missions. And if you dilute that too many times, if it's under the Homeland Security Department, and it's a question of an immediate terrorist threat versus a large cocaine shipment coming into the United States, and it really is a choice between these two, then the choice is properly going to be made in favor of the terrorist threat.

But if do you that for too long a time, bearing in mind how much I've talked about the connection between terrorism, organized crime and drug trafficking, if you do that too many times over a sustained period of time, then ultimately you impact negatively on the catastrophic terrorism and your ability to deal with that.

So I think we need to resist the temptation to put too much under this new department.

Mr. SOUDER. Mr. Nunez.

Mr. NUNEZ. I guess just in conclusion, I'm concerned about if I detect what's been going on here today, the notion that this some-

how is going to be primarily or exclusively a border homeland security thing. That troubles me. I mean, I think it doesn't make sense to have a whole department devoted just to border security.

I go back to what I said before. You know the FBI is the king of the hill in terms of antiterrorism. They've got the ball. They are the link to State and local law enforcement in regard, with regard to terrorist issues and many other issues. So it seems to me that the FBI has to be inside this department for the department to make any sense. They've got the FBI and then connect to State and local law enforcement through its field offices to all of the other agencies that are involved and to the border.

The feedback, the information can flow both ways. It just seems to me, you know, clear that we can't—we shouldn't separate the FBI from the border agencies and everybody else. I mean, we've got—you look at the chart of everybody else from agriculture and all these other places they're not specifically border agencies.

So I guess that's my sort of biggest point is that somehow the Bureau has to be brought into that, if that means carving it up and disseminating parts of it to groups that are not in it, so be it.

Mr. SOUDER. Mr. Kruhm, do you have any closing comments?

Mr. KRUHM. I think there's some lessons to be learned with the creation of ONDCP. How they organized, how they worked with State and local agencies, and all the frail agency and some of the stonewalling that took effect; their lack of clout for example, and they worked very hard at trying to improve the government's performance in the drug war.

So, if you have a chance to study some of their experiences, I think it would be very beneficial. I still feel that this organization, if at all possible, should be as agile as possible. It shouldn't be so large and cumbersome that it is going to lose its very great ability of all of these individual sources.

And one last thing, I think it is very interesting that this panel independently put together testimony that has a lot of common points in it.

And I hope the committee takes that into their consideration that we feel very strongly on a lot of common ground here. I think it would be great if we could all get together and come up with a master plan ourselves, but I guess that's not in the cards. Thank you very much.

Mr. SOUDER. Mr. Banks and Mr. Flynn.

Mr. BANKS. And I guess I would also share the concerns about this department being too large and not being focused. I think those are issues that do need to be of some concern.

Quite frankly, if the FBI and the anti-terrorism intelligence center isn't part of it, I think this Department can survive. If FINCEN for the financial intelligence is not part of it, doesn't mean they might not need money laundering investigators, but the FINCEN piece and that support could be done, the same thing attempted, and does it need a kind of a drug assistance secretary, just like Admiral Kramek talked about with an interdiction coordinator—you could have an interdiction coordinator here—crosses a lot of the same agencies that did before. It doesn't mean that they necessarily have to act as a competitor to DEA, but instead maybe a compatible point of contact with the Drug Enforcement Agency.

And the only other comment I would make is, you know, I still think it's the right thing to do. And I know the timeframe is very short. I certainly share Dr. Flynn's view; it would be nice to have a strategy before you had an organizational box put together, but that doesn't mean you can't get this off the ground and begin working this. There have been studies for a decade about some of the border agencies; they all recommended consolidation. We still don't have that at this point. I'm not so sure that a lot of thought hasn't been given to this over the years.

Mr. NUNEZ. Actually, the House published a book and it goes back to 1908. It's the chronological history of attempting to organize the border. And, to date, I don't believe they have been successful.

Mr. FLYNN. I may just add to that, that while I can appreciate this committee feeling very much under the gun in terms of trying to develop how to approach this, Hart-Rudman Commission and the U.S. Commission on National Security spent 3 years with 14 of the most distinguished Americans, seven on both sides of the aisle, thinking about this issue. They just came to the conclusion that the No. 1 threat to the United States for the foreseeable future is an attack on our homeland, and that we are fundamentally not organized to deal with that threat.

I was here in the Mansfield Room when they rolled out that report a little over a year ago. Not a single media outlet came to report the event. We have had a lot of data about the problem and we have had some serious people put some thinking into the solution; what we have is no action in addressing it. And I worry about this clock ticking, which is the bad guys figuring out how open we are and how disruptive they can be. And I think it's important that we get on with it. Thank you very much, sir.

Mr. SOUDER. Well, thank you each for your patience this afternoon, because I don't think there is any question that we are going to move something and it's going to—I don't think there is any question we are going to continue to work at it. I don't think we are under any illusions that it is going to solve any problem, particularly if the all the major intelligence agencies aren't part of it and are still competing with each other.

And I don't know how we address those kind of questions. But, it's a step. And I thought it was part of the goal of this hearing and in what we are trying to draw out is, look, there are tradeoffs here. And resources—reorganization does not cover resource shortages. And I also think the point was made that having a cabinet member who is focused on these particular agencies should help, but I am very concerned that narcotics and, for that matter, trade, which moving people across the border, are going to be lost in this debate if we are not very careful and don't make sure that, for example, if we are going to have catastrophic terrorism be the driving thing of concern at the border, that then we don't say, look, that means more bridges, more agents, more machines to clear it through, more at the ports, all these kind of things.

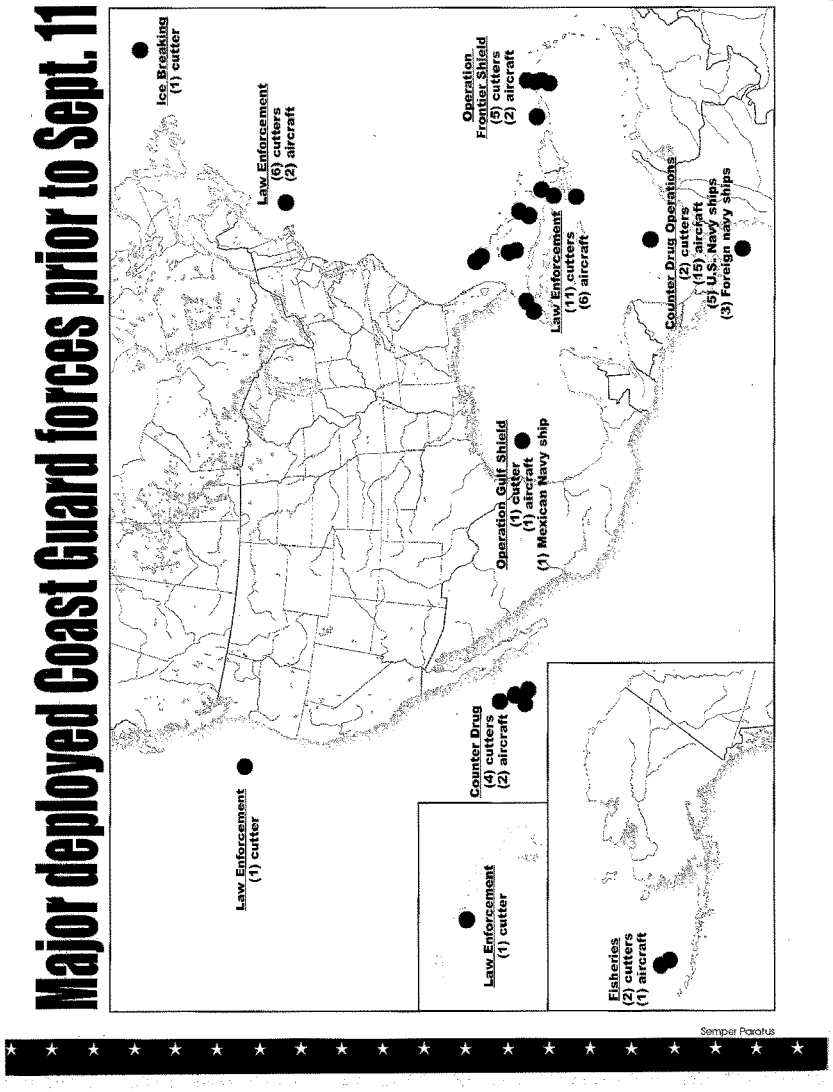
Because what will happen is, is that the second we don't have a catastrophic event, we will go right back in to every Member of Congress who is along the border being concerned about the trade; it's fine for law enforcement people to say, well, they won't be com-

ing over to eat as much. By the way, the 100 crossings involved—my hometown is roughly 150 to 175 miles from the border crossing in Detroit, but the pick-up plant in my hometown has 100 border crossings involved in each pick-up.

And it's one thing to say that catastrophic terrorism right now is the focus, but we all remember Tip O'Neill's holding that all politics are local and jobs are local. And, that ultimately, if we don't get the balance right with this, we are going to see the support for the agency decline, just like other categories did, if, in fact, it is successful. And that's our challenge here, and thanks for being part of that. And please get back in touch with us if you have any specifics as we start to look at the amendment process probably next week. Thank you all for your patience. And, with that, the hearing stands adjourned.

[Whereupon, at 5:36 p.m., the subcommittee was adjourned.]

[Additional information submitted for the hearing record follows:]


Major deployed Coast Guard forces prior to Sept. 11
Ice Breaking
(1) cutter
Law Enforcement
(6) cutters
(2) aircraft
Operation
Frontier Shield
(5) cutters
(2) aircraft
Law Enforcement
(11) cutters
(6) aircraft
Operation Gulf Shield
(1) cutter
(1) aircraft
(1) Mexican Navy ship
Counter Drug Operations
(2) cutters
(15) aircraft
(5) U.S. Navy ships
(3) Foreign navy ships
Law Enforcement
(1) cutter
Counter Drug
(4) cutters
(2) aircraft
Law Enforcement
(1) cutter
Fisheries
(2) cutters
(1) aircraft
Semper Paratus

Back in blue

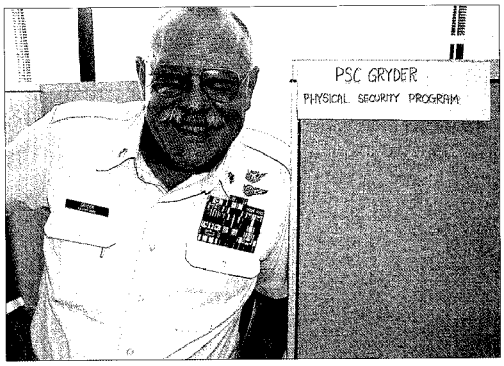
Story and photos by PA3 Chris Grisafe, D17

PSC Robert Gryder, a 36-year military veteran, rejoined the Coast Guard's active duty ranks shortly after the Sept. 11 terrorist attacks, just a month after submitting a retirement letter.

When Gryder saw the Sept. 11 tragedies unfold, he felt the call to help his country in a time of need.

"I knew I had to do something. I didn't know what, but I had to do something," said Gryder.

Four days after the attacks, Gryder decided to request a return to active duty. He first contacted Lt. Mary Ann Gosling, who is the Coast Guard's reserve program manager for Alaska. He contacted Gosling even before telling his wife of his intentions.



PSC Robert Gryder, a 36-year veteran, said he felt the call to return to service after the Sept. 11 terrorist attacks. He is a physical security program manager in Alaska.

"I called Ms. Gosling and asked her to cancel the retirement letter I submitted the month before and said 'Send me a set of orders,'" said Gryder. "She called two days later on a Sunday and told me to be in Juneau, Alaska, by Wednesday."

"That's when I told my wife, after I had done it," said Gryder. "For that I will be forever sorry. She called me an old fool and hit me when I told her. She's OK with it now, but she was mad that day."

PSC Robert Gryder returns to active duty after recently retiring.

Gryder, who lives in Eagle River, Alaska, is now working in Juneau as the 17th Coast Guard District's physical security program manager.

Gryder's military experience began in May 1965, when he joined the U.S. Marine Corps and served as a door gunner in the Vietnam War. He joined the Coast Guard in 1973.

"I joined the Coast Guard as an aviation electrician, but I was a terrible electrician," said Gryder. "But I was a damn good air crewman. I used to fly in the HU-16, known as the Goat, and the H-52 helicopter."

Gryder served four years as an active duty Coast Guardsman before becoming a reservist and switching to be a port security specialist. The Coast Guard has experienced some servicewide changes since Gryder last served on active duty.

"I'm impressed with the wellness program. Physical fitness is a part of this job, and I can't believe we have established a program where you spend time on the clock to get physically fit. I've never seen that before," explained Gryder.

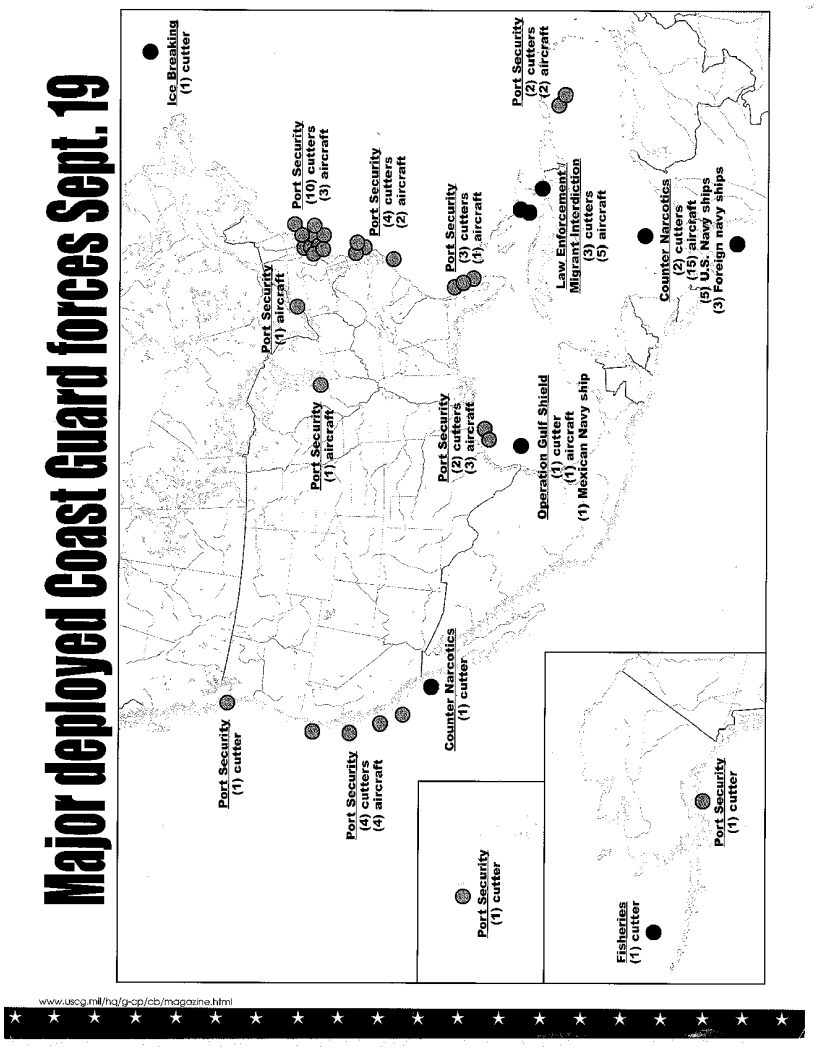
Along with the Coast Guard, Gryder has changed as well.

"I'm not a kid anymore. My knees sound like Rice Crispies," said Gryder.

Outside the active duty limelight, Gryder is an environmental, work health and safety consultant. He owns his own business training people in fall protection, respiratory protection and environmental compliance. He teaches at universities in Ketchikan and Kodiak, Alaska, and teaches in various villages as well.

Now, Gryder once again wears the uniform of the day as an active-duty member, just as he did 28 years ago.

"It feels natural to be back in uniform," said Gryder.


Major deployed Coast Guard forces Sept. 19
Ice Breaking
(1) cutter
Port Security
(10) cutters
(3) aircraft
Port Security
(4) cutters
(2) aircraft
Port Security
(3) cutters
(1) aircraft
Port Security
(2) cutters
(2) aircraft
Port Security
(1) aircraft
Port Security
(1) aircraft
Port Security
(2) cutters
(3) aircraft
Law Enforcement/
Migrant Interdiction
(3) cutters
(5) aircraft
Operation Gulf Shield
(1) cutter
(1) aircraft
(1) Mexican Navy ship
Counter Narcotics
(2) cutters
(15) aircraft
(5) U.S. Navy ships
(3) Foreign navy ships
Port Security
(1) cutter
Port Security
(4) cutters
(4) aircraft
Counter Narcotics
(1) cutter
Port Security
(1) cutter
Fisheries
(1) cutter
Port Security
(1) cutter
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